Supreme Court, U.S.
FILED
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No. 09-1343

IN THE

Supreme Court of the United States

J. McINTYRE MACHINERY LTD.,

Petitioner,

v.

ROBERT NICASTRO, *et ux.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 3, 2010
CERTIORARI GRANTED SEPTEMBER 28, 2010

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Superior Court of New Jersey, Law Division

1. Nicastro Plaintiffs' Complaint and Jury Demand, Filed September 22, 2003

2. J. McIntyre Machinery, Ltd.'s Answer and Jury Demand, Filed December 23, 2003

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8. Order Dismissing Complaint, Filed March 5, 2004

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12. Letter Opinion of Appellate Division, Reversing Dismissal, Filed May 26, 2005

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15. Letter Memorandum of Decision Dismissing Complaint, Filed November 3, 2006

16. Order Dismissing Complaint, Filed November 3, 2006

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18. Petition for Certification, Filed May 1, 2008

19. Order Granting Petition for Certification, Filed July 15, 2008

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Superior Court of New Jersey, Appellate Division

1. Notice of Appeal, Filed March 25, 2004

2. Appellants' Case Information Statement, Filed March 25, 2004

3. Respondents' Case Information Statement, Filed April 8, 2004

***

8. Appellants' Brief and Appendix, Filed August 26, 2004

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10. Respondents' Brief and Appendix, Filed November 1, 2004

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12. Appellant's Reply Brief, Filed November 15, 2004

13. Opinion, Filed May 26, 2005

14. Notice of Appeal, Filed November 22, 2006

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15. Appellants' Case Information Statement, Filed November 22, 2006

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17. Appellants' Brief and Appendix, Filed February 21, 2007

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19. Respondent's Brief and Appendix, Filed March 23, 2007

20. Appellant's Reply Brief, Filed April 9, 2007

21. Opinion, Filed April 9, 2008

Supreme Court of New Jersey

1. Notice of Petition for Certification, Filed April 29, 2008

2. Petition for Certification and Supplemental Appendix, Filed May 12, 2008

3. Petitioner's Appellate Division Appendix, Filed May 12, 2008

4. Respondent's Brief, Filed May 28, 2008

5. Respondent's Appellate Division Appendix, Filed May 28, 2008

6. Petitioner's Reply Brief, Filed June 9, 2008

7. Order Granting Certification, Filed July 15, 2008

8. Order Granting Motion of New Jersey Association For Justice to Appear as *Amicus Curiae,* Filed October 17, 2008

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12. Brief on Behalf of *Amicus Curiae* New Jersey Association for Justice, Filed November 14, 2008

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14. Petitioner's Response to Brief on Behalf of *Amicus Curiae* New Jersey Association for Justice, Filed December 8, 2008

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24. Opinion of the Court, Filed February 2, 2010

25. Notice of Filing of Petition for Writ of Certiorari with the United States Supreme Court, Filed May 10, 2010

26. Order of the United States Supreme Court Granting Petition for Writ of Certiorari, Filed October 4, 2010

APPENDIX B — COMPLAINT AND JURY DEMAND, FILED SEPTEMBER 22, 2003

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION

Docket No.: BER L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, h/w

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names), i/j/s/a,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiffs, Robert Nicastro and Roseann Nicastro, his wife, adult individuals residing at 3 Redstone Lane, Lodi, Bergen County, New Jersey, by way of Complaint against the defendants, says:

Appendix B

FIRST COUNT

1. Defendant, McIntyre Machinery America, Ltd. is a seller, distributor, and/or manufacturer of machinery, doing business in the State of New Jersey, with a principal place of business located at 895-G Hampshire Road, Stow, Ohio 44224. McIntyre Machinery America, Ltd. sells its products directly to customers in New Jersey; and, in particular, designed, manufactured, distributed and/or sold a machine known as a shear machine, model number 640 Shear, serial number 094-95, to plaintiff Robert Nicastro's employer, Curcio Scrap Metal, Inc., of 416 Lanza Avenue, Saddle Brook, Bergen County, New Jersey.

2. Defendant, J. McIntyre Machinery Ltd. is a manufacturer, designer, seller and/or distributor of machinery, doing business in the State of New Jersey, with a principal place of business located in Unit G, Acorn Park Ind. Est., Harriman's Lane, Dunkirk, Nottingham NG7 2TR, England; and, in particular, designed, manufactured, distributed and/or sold a machine known as a shear machine, model number 640 Shear, serial number 094-95, to plaintiff Robert Nicastro's employer, Curcio Scrap Metal, Inc., of 416 Lanza Avenue, Saddle Brook, Bergen County, New Jersey.

3. The defendants, John Does 1-10 and XYZ Corporations 1-10, fictitious names presently unknown to the plaintiff, designed, manufactured, sold and/or distributed the aforedescribed shear machine.

Appendix B

4. On or about October 11, 2001, plaintiff, Robert Nicastro, was employed by Curcio Scrap Metal, Inc., at their Saddle Brook, New Jersey location.

5. Within the course and scope of his employment, the plaintiff, Robert Nicastro, was required to operate a machine known as a shear machine, designed, manufactured, distributed and/or sold by the defendants, McIntyre Machinery America Ltd., J. McIntyre Machinery Ltd., John Does 1-10 and/or XYZ Corporations 1-10.

6. The shear machine was expected to, and did reach the employer, Curcio Scrap Metal, Inc., without substantial change in the condition in which it was sold.

7. During the course of plaintiff Robert Nicastro's work at Curcio Scrap Metal, Inc., the aforedescribed shear machine was being used by the plaintiff in the normal course of his employment duties, when the plaintiff's right hand came into contact with the shearing mechanism, causing severe injuries to the plaintiff's right hand, including but not limited to, amputation of several fingers.

8. The defendants, McIntyre Machinery America Ltd., J. McIntyre Machinery Ltd., John Does 1-10 and/or XYZ Corporations 1-10, are liable to the plaintiff, in a "Product Liability Action" pursuant to N.J.S.A. 2A:58C-2 in that the shear machine was not reasonably fit, suitable, or safe for its intended purpose because:

(a) It deviated from design specifications, formulae, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae;

(b) It failed to contain adequate warnings or instructions;

(c) It was designed in a defective manner so as to allow the plaintiff to become injured while operating the machine in the normal course of his employment.

The defendants are otherwise strictly liable in tort to the plaintiff according to the aforementioned "Product Liability Action" as may be revealed during the course of trial.

9. As a direct and proximate result of the defendants' strict liability in tort, the plaintiff, Robert Nicastro, has suffered and will suffer severe and permanent physical pain and suffering, has incurred and will incur in the future extensive medical expenses, and has suffered and will in the future suffer a loss and diminishment of income and wages, and such other and further damages as will be proven at the time of trial.

WHEREFORE, the plaintiff, Robert Nicastro, demands judgment against the defendants, McIntyre Machinery America Ltd., J. McIntyre Machinery Ltd., John Does 1-10 and/or XYZ Corporations 1-10,

individually, jointly, severally, and in the alternative, for damages in accordance with the laws of the State of New Jersey, together with interest, attorneys fees and costs of suit, and such other and further relief as a Court may deem fair and just.

SECOND COUNT

1. The plaintiffs hereby repeat and incorporate by reference all of the allegations contained in the First Count of the Complaint as if set forth in full at length herein.

2. Plaintiff, Roseann Nicastro, is the lawful wife of plaintiff, Robert Nicastro.

3. As a consequence of the injuries sustained by plaintiff Robert Nicastro, his wife, plaintiff Roseann Nicastro, has sustained a loss of consortium, including, but not limited to, a loss of the society and affection of her husband.

WHEREFORE, plaintiff Roseann Nicastro, demands judgment against the defendants, McIntyre Machinery America Ltd., J. McIntyre Machinery Ltd., John Does 1-10 and/or XYZ Corporations 1-10, individually jointly, severally, and in the alternative, for damages in accordance with the laws of the State of New Jersey, together with interest, attorneys fees and costs of suit, and such other further relief as a Court may deem fair and just.

Appendix B

RAKOSKI & ROSS, P.C.

BY: /s/

Dated: 9/17/03 ALEXANDER W. ROSS, JR.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a Trial by Jury of six as to all issues contained in this Complaint.

RAKOSKI & ROSS, P.C.

BY: /s/

Dated: 9/17/03 ALEXANDER W. ROSS, JR.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that pursuant to Rule 4:25-4 of the Rules of Court, that Alexander W. Ross, Jr., Esq. is hereby designated as trial counsel in this action on behalf of the plaintiffs.

RAKOSKI & ROSS, P.C.

BY: /s/

Dated: 9/17/03 ALEXANDER W. ROSS, JR.

Appendix B

CERTIFICATION PURSUANT TO RULES 4:5-1

Pursuant to Rule 4:5-1, to the best of my knowledge, information and belief at this time, the matter in controversy is not the subject matter of any other action pending in any Court, with the exception of a possible worker's compensation claim. There are no other pending arbitration proceedings, and no other such action or arbitration is contemplated, and further that there are no other parties known who should be joined in this action, with the exception of the fictitious names, presently unknown to the plaintiffs.

RAKOSKI & ROSS, P.C.

BY: /s/

Dated: 9/17/03 ALEXANDER W. ROSS, JR.

APPENDIX C — J. McINTYRE MACHINERY LTD.'S ANSWER, SEPARATE DEFENSES, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL, FILED DECEMBER 23, 2003

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION — BERGEN COUNTY
DOCKET NO: BER-L-6857-03

Civil Action

ROBERT NICASTRO and ROSEANN NICASTRO, husband and wife,

Plaintiffs,

v.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names),

Defendants.

ANSWER, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

J. McIntyre Machinery Ltd., by way of Answer to the Complaint of plaintiffs Robert Nicastro and Roseann Nicastro, his wife, say:

Appendix C

ANSWER TO FIRST COUNT

1. It makes no response to the allegations set forth in paragraph 1 as none of the allegations contained therein are directed towards or against it.

2. It admits that its principal place of business is located in Nottingham, England but denies the remaining allegations set forth in paragraph 2.

3. It makes no response to the allegations set forth in paragraph 3 as none of the allegations contained therein are directed towards or against it.

4. It is currently without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraphs 4 through 7.

5. It denies the allegations set forth in both paragraph 8's insofar as those allegations are directed towards or against it.

WHEREFORE, J. McIntyre Machinery Ltd. demand a judgment dismissing plaintiffs' Complaint with prejudice and with an award for all lawful costs and fees.

ANSWER TO SECOND COUNT

6. It repeats its answers to the allegations set forth in the First Count as if fully set forth at length herein.

7. It is currently without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 2.

8. It denies the allegations set forth in paragraph 3.

WHEREFORE, J. McIntyre Machinery, Ltd. demand a judgment dismissing plaintiffs' Complaint with prejudice and with an award for all lawful costs and fees.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Complaint and all counts thereof fail to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiffs' claims are barred by the statute of limitations.

THIRD SEPARATE DEFENSE

This Court lacks personal jurisdiction over the answering defendant.

FOURTH SEPARATE DEFENSE

There has been no lawful service of legal process upon the answering defendants and plaintiffs' Complaint should be dismissed for this reason.

Appendix C

FIFTH SEPARATE DEFENSE

The answering defendant did not sell, supply or distribute any product which was defective in any manner and which caused injury to plaintiff Robert Nicastro.

SIXTH SEPARATE DEFENSE

If Robert Nicastro used any product that was manufactured, sold or distributed by the answering defendant, that product was materially and substantially altered from the time it was placed into the stream of commerce by the answering defendant, which alteration is an intervening and superceding cause of the alleged loss.

SEVENTH SEPARATE DEFENSE

If Robert Nicastro was injured by any product manufactured by the answering defendant, he was using the product in an unintended manner which was not reasonably foreseeable to the answering defendant.

EIGHTH SEPARATE DEFENSE

Robert Nicastro's negligence was a proximate cause of his alleged injuries and he is barred from making any recovery in this case, or his award must be reduced because of his comparative fault or negligence.

Appendix C

CLAIM FOR CONTRIBUTION

While denying liability to the plaintiffs in this action, if J. McIntyre Machinery Ltd. is adjudicated as being liable to the plaintiffs, it demands contribution from any and all defendants named and to be named in this action for their pro rata share of their responsibility for the plaintiffs' injuries and demands a credit for any settlement which is obtained by the plaintiffs with any party or tortfeasor whose conduct contributed to the plaintiffs' injuries or losses, and further demands a credit for plaintiffs comparative negligence in causing his injuries.

JURY TRIAL

McIntyre Machinery Ltd. demands a trial by jury as to all issues and counts so triable.

DEMAND FOR ANSWERS TO UNIFORM FORM A INTERROGATORIES TO BE ANSWERED BY PLAINTIFF IN ALL PERSONAL INJURY CASES: SUPERIOR COURT

J. McIntyre Machinery Ltd. demands that plaintiffs provide certified answers to Uniform Form A Interrogatories that are to be answered by plaintiffs in all personal injury cases: Superior Court within the time period provided by our Rules of Court.

Appendix C

DESIGNATION OF TRIAL COUNSEL

Mark T. McMenamy is hereby designated as J. McIntyre Machinery Ltd.'s trial counsel pursuant to Rule 4:25-6.

BRESSLER, AMERY & ROSS, P.C.

/s/
Mark T. McMenamy, Esq.
Attorneys for Defendant
J. McIntyre Machinery Ltd.

Dated: December 22, 2003

APPENDIX D — NOTICE OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND, IN THE ALTERNATIVE, TO QUASH SERVICE OF PROCESS, DATED JANUARY 26, 2004

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO: BER-L-6857-03

Civil Action

ROBERT NICASTRO and ROSEANN NICASTRO, husband and wife,

Plaintiffs,

v.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names),

Defendants.

TO: Alexander W. Ross, Jr., Esq.
Rakoski& Ross, P.C.
70 East Main Street
Marlton, New Jersey 08053-2142
Attorneys for Plaintiffs

NOTICE OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND, IN THE ALTERNATIVE, TO QUASH SERVICE OF PROCESS

Appendix D

COUNSEL:

PLEASE TAKE NOTICE that on Friday, February 20, 2004, at 9:00 a.m. or as soon thereafter as counsel may be heard, the undersigned, attorneys for defendant J. McIntyre Machinery, Ltd. will apply at the Bergen County Courthouse in Hackensack, New Jersey for the entrance of an order dismissing plaintiffs' Complaint, as to it, for lack of personal jurisdiction and, in the alternative, if its personal jurisdiction motion is denied, for the entrance of an order quashing service of plaintiffs' Summons and Complaint for plaintiffs' failure to comply with requirements of The Hague Convention concerning the lawful service of legal documents upon companies that are incorporated and located in the United Kingdom.

TAKE FURTHER NOTICE that in support of this application, J. McIntyre Machinery, Ltd. will rely upon the Certifications of John Midgley and Mark T. McMenamy and the Brief which has been filed in support of this application.

TAKE FURTHER NOTICE that no date has been set for either a pretrial conference or for a trial in this matter; that the filing fee for this application has been paid; that a proposed form of Order granting J. McIntyre Machinery, Ltd. the relief which it seeks on this motion is being provided herewith and that it requests oral argument if the motion is opposed by plaintiffs' counsel.

Appendix D

BRESSLER, AMERY & ROSS, P.C.

By:
Mark T. McMenamy, Esq.
Attorneys for Defendant
J. McIntyre Machinery, Ltd.

DATED: January 26, 2004

APPENDIX E — CERTIFICATION OF JASON MIDGLEY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, DATED JANUARY 24, 2004

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO: BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, husband and wife,

Plaintiffs,

v.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names),

Defendants.

CERTIFICATION OF JASON MIDGLEY IN SUPPORT OF J. MCINTYRE MACHINERY, LTD.'S MOTION TO DISMISS FOR LACK OF JURISDICTION AND, IN THE ALTERNATIVE, TO QUASH SERVICE OF PROCESS

Appendix E

Jason Midgley certifies to the following facts:

1. I am the Managing Director of J. McIntyre Machinery, Ltd. ("McIntyre").

2. I have reviewed the plaintiffs' complaint in this action which relates to an October 2001 workplace accident at Curcio Scrap Metal in Bergen County, New Jersey.

3. McIntyre is a corporation organized under the laws of the United Kingdom. Its principal place of business is located in Nottingham, England.

4. McIntyre is in the business of manufacturing shearing machines.

5. McIntyre manufactured the shearing machine, which is at issue in this case, in 1995. The machine was made in Nottingham, England and shipped to the purchaser in Stow, Ohio in February 1995.

6. A company called McIntyre Machinery America, Ltd. ("MMA") purchased the shear. MMA is an Ohio corporation. Its principal place of business is located in Stow, Ohio. At all relevant times, MMA was in the business of buying shears from McIntyre and re-selling them to MMA's customers.

7. MMA is not now, nor has it ever been, affiliated with McIntyre. At no time was MMA ever a parent, subsidiary, or an affiliate of McIntyre. MMA is an

entirely separate entity and does not, and has never, shared either common owners or managers with McIntyre.

8. Based on plaintiff's allegations that the at-issue shear was in use at Curcio Scrap Metal in Saddle Brook, New Jersey in October 2001, it appears that MMA sometime between 1995 and 2001, re-sold the shear to Curcio Scrap Metal, or sold the machine to another entity, which in turn sold the shear to Curcio.

9. McIntyre did not have any knowledge of the transactions between MMA and its customers concerning the at-issue shear. McIntyre does not make it part of its business to track the shears past shipment to its customer.

10. McIntyre did not ship the machine from Ohio to New Jersey.

11. McIntyre does not directly market, advertise, sell or solicit the business of anyone in New Jersey to buy its products, nor did it ever do so. In fact, McIntyre does not, and never did, maintain a sales staff in or for the United States.

12. McIntyre had no written distributorship contract with MMA.

13. MMA stopped buying McIntyre shearing machines in 2002.

14. McIntyre did not design the machine at issue in this case for market in New Jersey.

15. McIntyre did not establish channels to provide regular service or advice to customers in New Jersey.

16. McIntyre owns no property in New Jersey. It does not maintain an office or conduct any business in New Jersey.

17. McIntyre has no employees in New Jersey.

18. McIntyre has no agents in New Jersey.

19. McIntyre generates none of its revenues from and pays no taxes in New Jersey.

20. McIntyre does not have a telephone number, or a telephone directory listing in New Jersey.

21. McIntyre does not maintain a bank account in New Jersey.

22. McIntyre has never had a license to do business in New Jersey.

23. McIntyre has no contacts with New Jersey other than this lawsuit.

24. McIntyre learned of the above-captioned lawsuit when it received a letter dated October 30, 2003, via fax from Attorney Warren H. Gould of Fort Worth, Texas.

25. Apparently, the plaintiffs tried to effect service of process on Mr. Gould's client, Bobby Alexander, also of Fort Worth, Texas. Plaintiffs' Summons was addressed to "J. McIntyre Machinery, Ltd., c/o Bobby Alexander, 3700 N. Commerce, Fort Worth, TX 76106." Mr. Alexander is associated with Strip Technology, Inc.

26. In 2003, McIntyre began selling shearing machines to Strip Technology, Inc., in Texas, who resells these machines to its customers. Strip Technology, Inc., is entirely independent of McIntyre. McIntyre has no control over Strip Technology, Inc.'s operations or activities. There is no common ownership or management between Strip Technology, Inc., and McIntyre.

27. Mr. Alexander is not a director, officer, trustee, employee, or transferee of McIntyre nor is he authorized to accept service of process on behalf of McIntyre.

28. McIntyre does not have a registered agent authorized to accept service of process in New Jersey or any other state.

I certify that the foregoing statements made by me are true. I am aware that if any statements made by me is willfully false, that I am subject to punishment.

/s/
Jason Midgley

Dated: January 24, 2004

APPENDIX F — CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION

Docket No.: BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, h/w

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names), i/j/s/a,

Defendants.

CERTIFICATION OF ALEXANDER W. ROSS, JR.

Alexander W. Ross, Jr., Esquire, of full age, hereby certify as follows:

1. I am an attorney at law in the State of New Jersey and am representing the plaintiffs in this products

liability case with catastrophic personal injuries. As such, I am fully familiar with the facts stated herein.

2. In order to obtain an address in the United States for McIntyre Machinery Ltd., I went to the website of J. McIntyre Machinery, Ltd., which provides an address or Nottingham, England, UK. See Contents of Website, attached hereto as Exhibit "A".

3. From their website, I sent them an email from my office in Marlton, New Jersey, requesting information on the name and address of any U.S. sales or distribution centers. See E-mail dated October 22, 2003, attached hereto as Exhibit "B".

4. On that same day, I received an e-mail in response from J. McIntyre Machinery, advising me that they currently use "Strip Technology" in Texas for the sales of shears and balers. It provided contact information for a Bobby Alexander in Fort Worth, Texas. See E-mail dated October 22, 2003, attached hereto as Exhibit "C".

5. Also on the same day, I received an e-mail from Bobby Alexander, stating that he is the "North and South American Representative" for J. McIntyre Machinery. He also stated that he was contacting me at the request of J. McIntyre Machinery. See E-mail dated October 22, 2003, attached hereto as Exhibit "D".

6. I directed my secretary to serve the Complaint and Summons on Bobby Alexander in Fort Worth, Texas,

the admitted representative of J. McIntyre Machinery. See copy of certified mail return receipt, attached hereto as Exhibit "E". Defense counsel subsequently answered the Complaint on behalf of the defendant J McIntyre Machinery Ltd.

7. Attached hereto as Exhibit "F" is the invoice for the machine in question, evidencing that it was shipped from Ohio to New Jersey. The invoice is from "McIntyre Machinery America, Ltd." with a subtitle: "America's Link to Quality Metal Processing Equipment." It is clear that McIntyre Machinery America, Ltd., was the American distributor of McIntyre machines designed and manufactured in England.

9. Attached hereto as Exhibit "G" is documentation which came with the invoice. This document provides only the J. McIntyre Machinery address in Nottingham, England, not the McIntyre Machinery America, Ltd. address in Ohio.

10. Attached hereto as Exhibit "H" is a copy of the cover of the instruction manual which came with the shearing machine. The instruction manual has the Harriman's Lane, Nottingham, England, address on the front cover, with a sticker placed halfway over that address, supplying the McIntyre Machinery address in Ohio. Also provided in Exhibit "H" is page 8 of the instruction manual, which references USA standards as well as UK standards.

Appendix F

11. J. McIntyre Machinery is listed as an exhibitor at ISRI's 2002 Convention in Florida, *See* List of Exhibitors attached hereto as Exhibit "I".

12. Additionally, an article which appeared in "Recycling Today" on October 10, 2003, contains statements from Sally Johnson, J. McIntyre's managing director, stating:

> J. McIntyre Machinery is keen to stress that Strip-Tec is now the only company authorized to sell new McIntyre equipment following the demise of *our former agent McIntyre America in 2001.* [Emphasis added].

See Article, attached hereto as Exhibit "J".

13. Pictures of Mr. Nicastro's injuries, showing amputations and attempted reattachment of all four fingers on the left hand of this working man, are attached hereto as Exhibit "K"".

14. A copy of the Report of Plaintiff's Liability Expert, Wayne Nolte, P.E., is attached hereto as Exhibit "L". Mr. Nolte opines that the machine in question, manufactured by defendant J. McIntyre Machinery Ltd., was dangerously defective and in violation of applicable OSHA regulations.

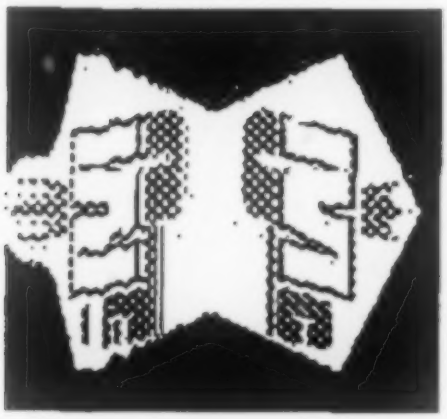
15. Attached hereto as Exhibit "M" are documents relating to service upon McIntyre pursuant to The Hague Convention.

Appendix F

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

ALEXANDER W. ROSS, JR.

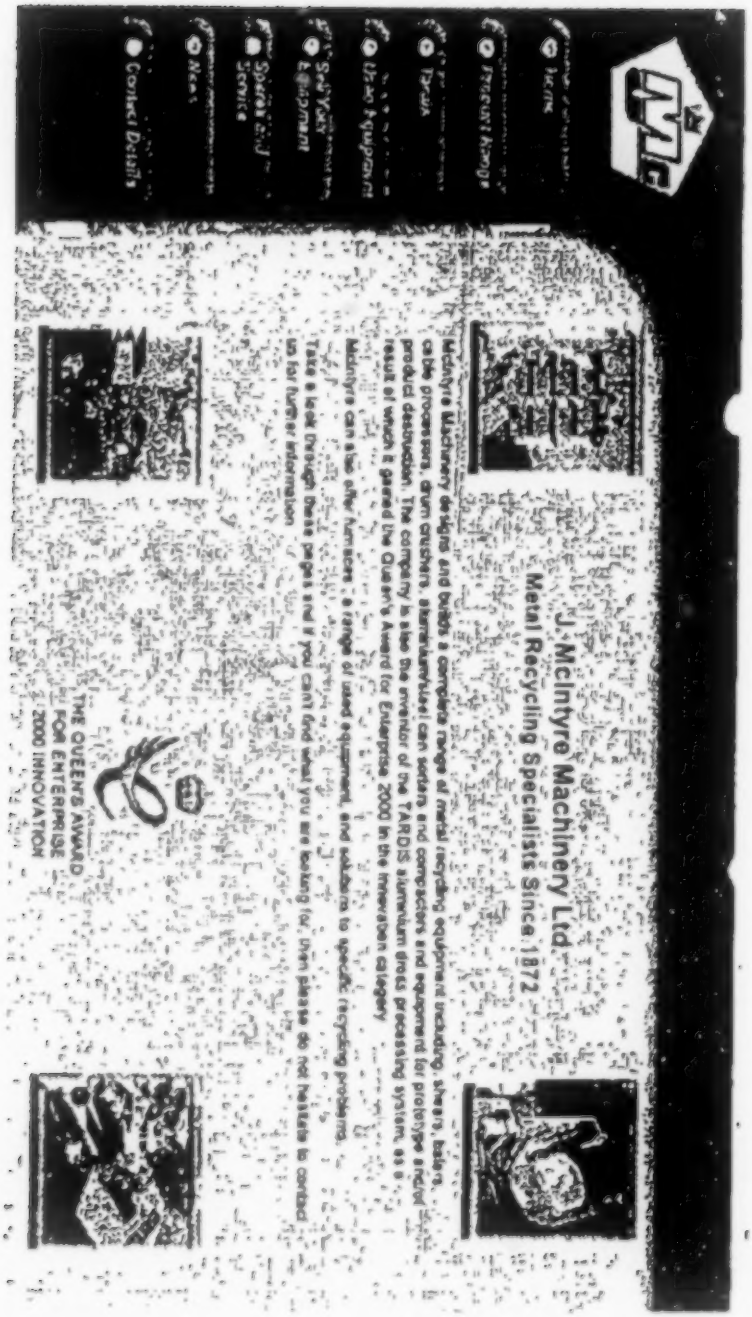
APPENDIX G — EXHIBIT A TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: PRINTED PAGES FROM WEBSITE OF J. McINTYRE MACHINERY, LTD.



J. McIntyre Machinery Ltd.

BEST AVAILABLE COPY

Appendix G


J. McIntyre Machinery Ltd.
Metal Recycling Specialists Since 1872
McIntyre Machinery designs and builds a complete range of metal recycling equipment including: sheers, balers, cable processors, drum crushers, shredders/swarf can sorters and compactors and equipment for prototype and test product destruction. The company is also the inventor of the TARDIS aluminium dross processing system, as a result of which it gained the Queen's Award for Enterprise 2000 in the Innovation category
McIntyre can also offer furnaces, a range of used equipment, and solutions to specific recycling problems.
Take a look through these pages and if you can't find what you are looking for, then please do not hesitate to contact us for further information
THE QUEEN'S AWARD FOR ENTERPRISE 2000 INNOVATION

Appendix G

J.McIntyre Machinery Ltd - Metal Recycling Equipment

J McIntyre Machinery Ltd designs, develops and manufactures a complete range of equipment for metal recycling including

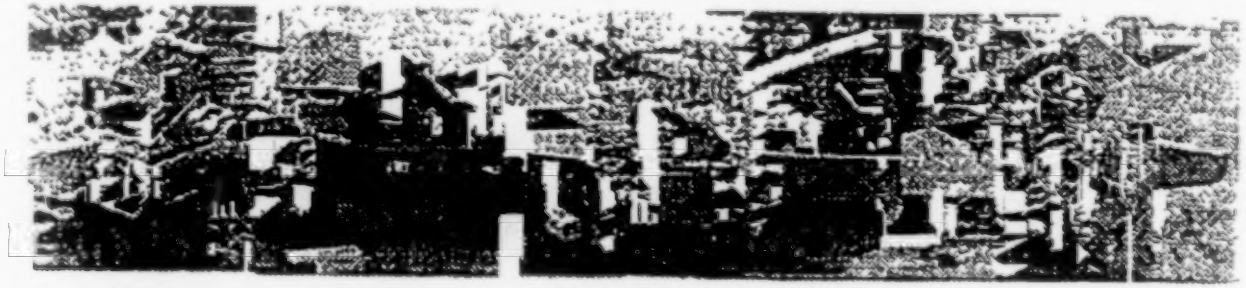
Metal Shears,
Balers,
Can Balers and Sorters
Drum crushers
Tardis - Aluminium dross processing
Ingot Casting Machines
Specialist - Products
Foundry Equipment

For further information please submit the ENQUIRY form

Appendix G

The
McIntyre Shear Range

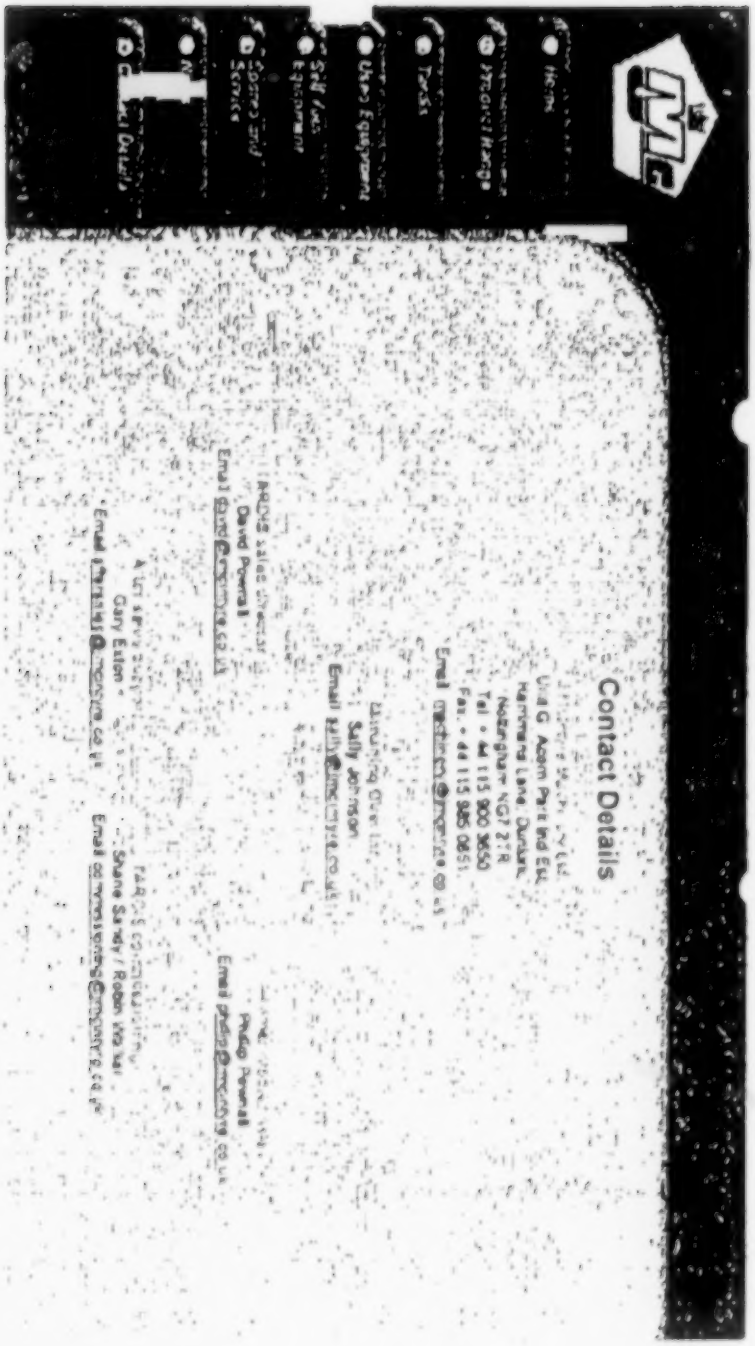
McIntyre shears were originally designed to withstand the rigours of scrapyard use, making them suitable for any industrial application. Still the market leaders in the metal recycling industry, McIntyre shears are rigorously tried and tested in McIntyre yards before being offered for sale. Blade lengths vary from 200mm to 600mm



200B	320S	407	4000	640
8"/200mm Blade	12"/320mm Blade	16"/407mm Blade	16 "/407mm Blade	25"/640mm Blade
40 tonne shear force	64 tonne shear force	79 tonne shear force	79 tonne shear force	183 tonne shear force
Cutting Capacity	Cutting Capacity	Cutting Capacity	Cutting Capacity	Cutting Capacity
Mild Steel 43A	Mild Steel 43A	Mild Steel 43A	Mild Steel 43A	Mild Steel 43A
36mm Dia	50mm Dia	58mm Dia	58mm Dia	76mm Dia
38mm Square	40mm Square	45mm Square	45mm Square	70mm Square

For further information please submit the enquiry form

Appendix G



Appendix G

APPENDIX H — EXHIBIT B TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: E-MAIL FROM PLAINTIFFS' COUNSEL TO MACHINERY@JMCINTYRE.COUK REQUESTING NAMES AND ADDRESSES OF U.S. SALES OR DISTRIBUTION OFFICES, DATED OCTOBER 22, 2003

From: "Alex Ross" <aross@rakoskiross.com>
To: <machinery@jmcintyre.co.uk>
Sent: Wednesday, October 22, 2003 8:58 AM
Subject: U.S. sales or distribution office

Please advise me of the name and address of any U.S. sales or distribution offices.

APPENDIX I — EXHIBIT C TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: E-MAIL FROM PHILLIP POWNALL, EXPORT SALES DIRECTOR OF J. McINTYRE MACHINERY LTD. TO PLAINTIFF'S COUNSEL, IN RESPONSE TO COUNSEL'S REQUEST FOR U.S. SALES OR DISTRIBUTION OFFICES, FORWARDED TO KARYN RICKARDS, DATED OCTOBER 22, 2003

From: "Alex Ross" <aross@rakoskiross.com>
To: "Karyn Rickards" <krickards@rakoskiross.com>
Sent: Wednesday, October 22, 2003 9:31 AM
Subject: Fw: US Distribution

Serve 'em.

Original Message
From: *Phillip Pownall*
To: *aross@rakoskiross.com*
Sent: Wednesday, October 22, 2003 10:20 AM
Subject: US Distribution

Hi Alex,

Thanks for your e mail. We use Strip Technology in Texas for the sales of shears and balers.

Appendix 1

Contact Info:

Bobby Alexander
3700N Commerce
Fort Worth
Texas
76106

0018176261504
0018176252207

bobbymalexander@hotmail.com

Best Regards

Phillip Pownall
Export Sales Director
J McIntyre Machinery Ltd
Tel 00441159003658
Fax 00441159850651
Mobile 07764826476

phillip@jmcintyre.co.uk
www.jmcintyre.co.uk

APPENDIX J — EXHIBIT D TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: E-MAIL FROM BOB ALEXANDER, PRESIDENT, STRIP TECHNOLOGY INC., TO PLAINTIFF'S COUNSEL, FORWARDED TO COUNSEL'S ASSISTANT TO SERVE STRIP TECHNOLOGY, FORWARDED TO KARYN RICKARDS, DATED OCTOBER 22, 2003

From: "Alex Ross" <aross@rakoskiross.com>
To: "Karyn Rickards" <krickards@rakoskiross.com>
Sent: Wednesday, October 22, 2003 10:34 AM
Subject: Fw: McIntyre Machinery Representative

Serve 'em.

Original Message
From: *Bobby Alexander*
To: *aross@rakoskiross.com*
Sent: Wednesday, October 22, 2003 10:45 AM
Subject: McIntyre Machinery Representative

Alex;

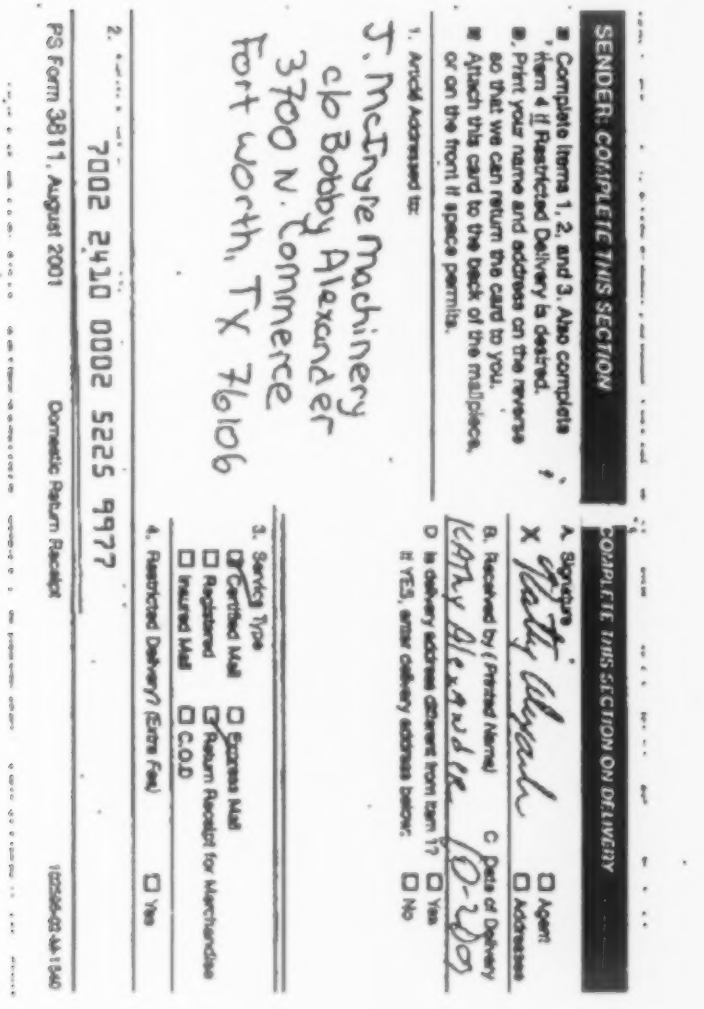
Good morning. My name is Bob Alexander of Strip Technology, Inc. in Fort Worth, Texas. Strip Tec. is the North, and South American Representative for McIntyre Machinery. I am sending you my contact information at the request of McIntyre Machinery getting an e-mail from you. If I can be of *any* assistance to you, contact me anytime.

Appendix J

Best Regards
Bob Alexander
President

Strip Technology, Inc.
3700 North Commerce Street
Fort Worth, Texas 76106
800-426-4126 Office
817-625-2207 Fax.
Bobby@StripTec.com e-mail
www.StripTec.com web address

APPENDIX K — EXHIBIT E TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: CERTIFIED MAIL RETURN RECEIPT ADDRESSED TO BOB ALEXANDER



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. McIntyre Machinery
c/o Bobby Alexander
3700 N. Commerce
Fort Worth, TX 76106

2. [illegible] 7002 2410 0002 5225 9977

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Kathy Alexander ☐ Agent ☐ Addressee

B. Received by (Printed Name) Kathy Alexander C. Date of Delivery 10-2-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

APPENDIX L — EXHIBIT F TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: McINTYRE MACHINERY AMERICA, LTD.'S AUGUST 25, 1995 INVOICE FOR SALE OF A MCINTYRE MODEL 640 SHEAR TO CURCIO SCRAP METAL

McINTYRE MACHINERY AMERICA, LTD.
America's Link to Quality Metal Processing Equipment
887-I Hampshire Road
Stow, OH 44224, U.S.A.
Phone: 216-922-4330 Fax: 216-922-4343

330

INVOICE

INVOICE NO: 950414
DATE August 25, 1995

Bill To:
Curcio Scrap Metal
418 Lanza Ave.
Saddlebrook, NJ 07662
ATTN Mike Curcio

Ship To:
Same

Ph 201-478-3133

SALESPERSON	P.O. NUMBER	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
Joe Latona	Verbal- Mike	8/25/95	Customer Carrier	Stow, OH	Check

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	McIntyre Model 640 Shear, 440 volt	$24,900.00	$24,900.00
			$ 0.00
			$ 0.00
			$ 0.00
			$ 0.00
			$ 0.00
			$ 0.00
		SUBTOTAL	$24,900.00
		SALES TAX	
		SHIPPING & HANDLING	
		TOTAL DUE	$24,900.00

Make all checks payable to McIntyre Machinery of America, Inc.
If you have any questions concerning this invoice, call: Mary Gaither, 216-922-4330

Ap. 8/31/96
CK# 38187

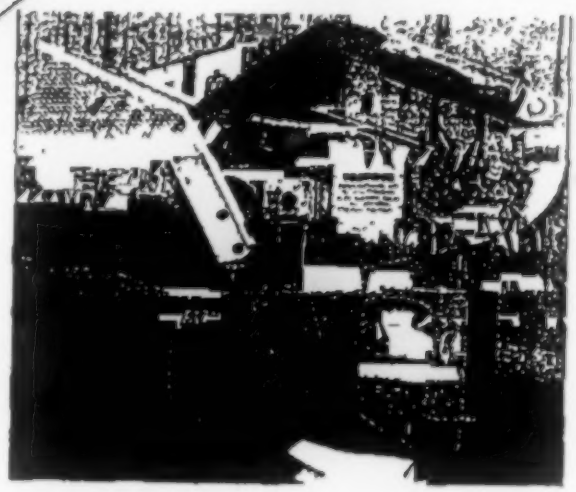
THANK YOU FOR YOUR BUSINESS!

GAIL'N' MR. ROSS

APPENDIX M — EXHIBIT G TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: EXCERPT OF J. McINTYRE MACHINERY LTD. 640 GOLD SHEAR PRODUCT BROCHURE

MACHINERY

640 Gold



The McIntyre 640 Gold offers unbelievable performance at an unbeatable price, a modern shearing machine which will be an asset to both Ferrous and Non-Ferrous operations.

UNBEATABLE

Construction of this machine follows McIntyre's well-proven design route, offering simplicity of operation together with shearing performance – often unmatched by machines at twice the price

HIGH PERFORMANCE

With a massive cutting capacity of upto 3" (76mm) dia. on mild steel bar, major features of the 640 Gold include easy to operate control to give automatic continuous stroke as an alternative to foot pedal operation, a shearing height which will reduce operator fatigue and extra heavy duty jaw pivot bearings which will ensure a long machine life and allows the operator to safely cut metals by single or continuous action The operator guard and safety rail are supplied as standard on all 640 Gold Shears. Optional equipment includes forced draft cooling for hot climates and all-immersed tank heaters for cold climates.

SERVICEABLE

An additional advantage of the 640 Gold is that its design incorporates off-the-shelf hydraulic parts from suppliers with international sales outlets – guaranteeing serviceability well into the future – wherever you may be based

VERSATILE

A choice of Shearing or

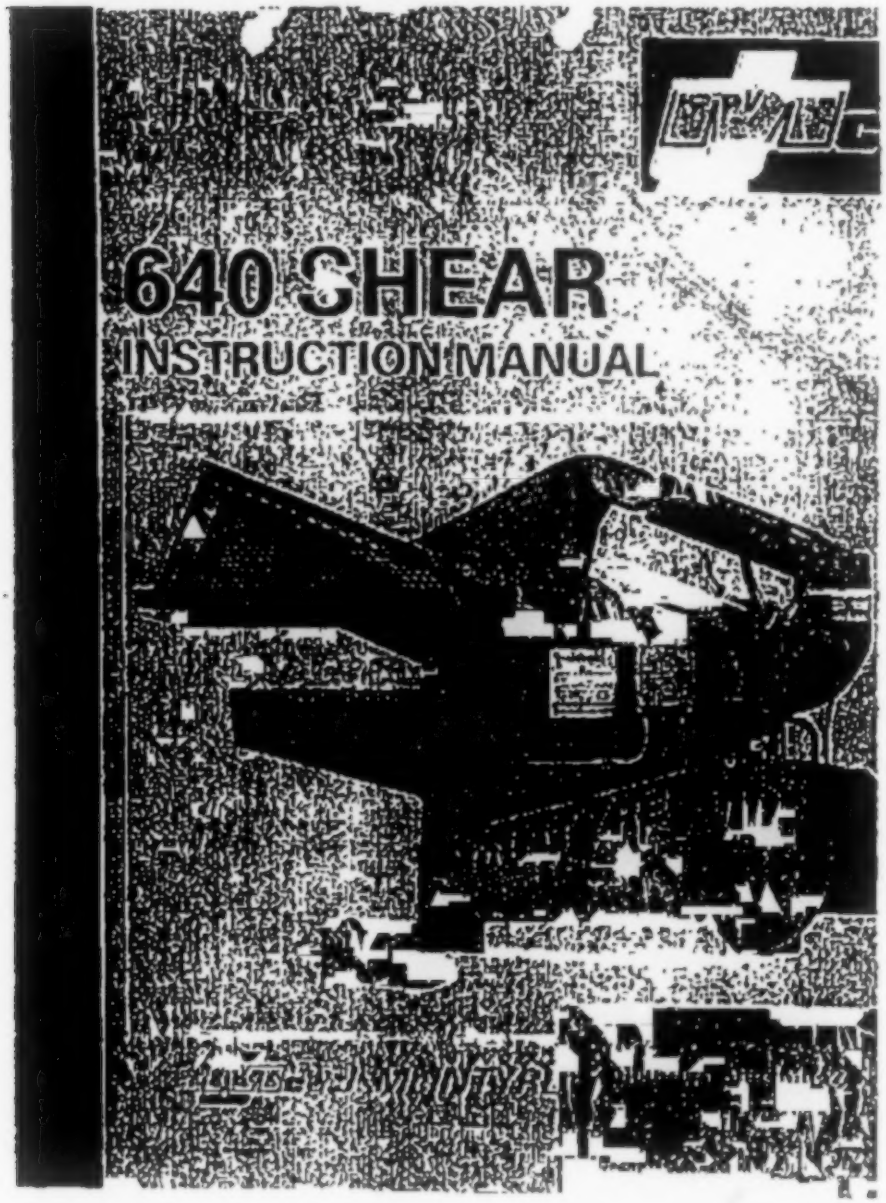
TRIED AND TESTED

Since its introduction, the 640 Gold has proved that it is as tough as it looks Only after a year of successful operation was the product launched onto the market.

Examples are now in use throughout the World and the shear has proved to be rugged, reliable and adaptable, well capable of withstanding heavy scrap yard use combined with cost effective operation.

J McIntyre Machinery Ltd
Unit 7 Lenton Lane
Dunkirk Nottingham
NG7 2SD
Phone 0115-978 0781
Fax: 0115-942 2357

APPENDIX N — EXHIBIT H TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: COVER AND PAGE 8 FROM A J. McINTYRE MACHINERY LTD. 640 SHEAR INSTRUCTION AND SAFETY MANUAL

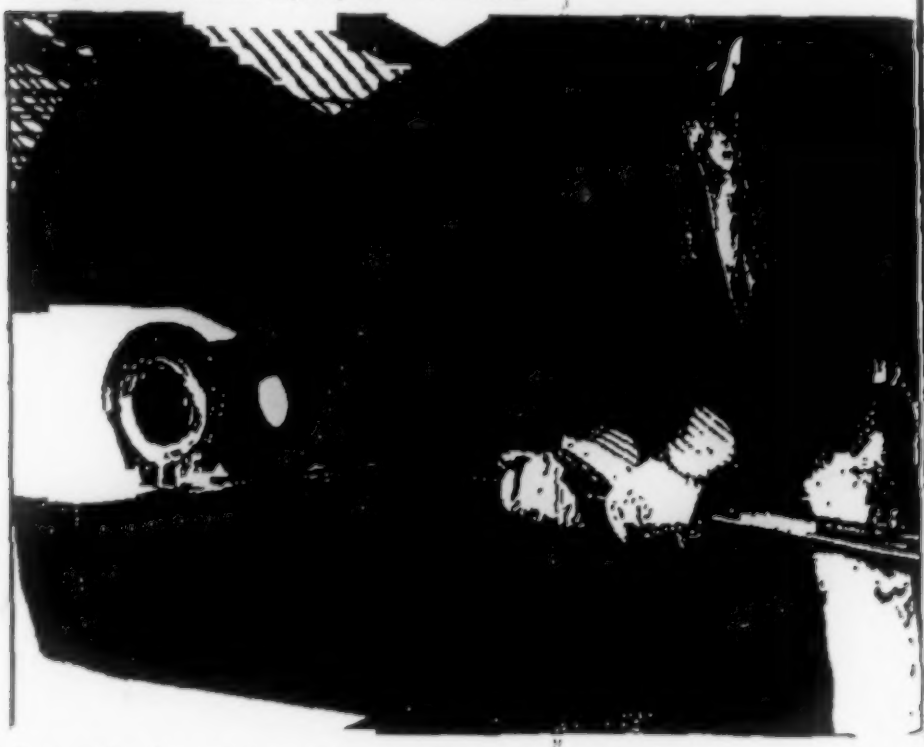


Appendix N

The following protective clothing must be worn at all times whether operating or adjusting the 640 Shear.

Safety goggles with side screens or full face safety visor.
Safety helmet (hard hat).
Protective safety boots.
Gloves and protective apron.
In addition to the above ear protection must be worn whilst using the diesel model 640 Shear

The owner and operators of a 640 Shear must make themselves aware of the Health and Safety at Work Regulations (UK) and the American National Standards Institute Regulations (USA) for the use of Scrap Metal Processing Equipment. Trade organisations such as the British Scrap Federation, The Secondary Metals Association (UK) and The Institute of Scrap Iron and Steel (USA) are good sources for up to date working practices and regulations or where they may be obtained from.



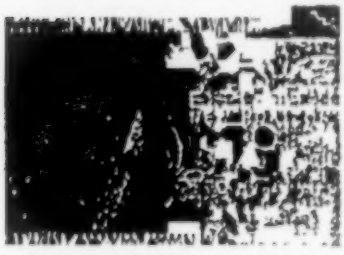
Practice Shearing small items with the aid of tongs or long handled pliers.

APPENDIX O — EXHIBIT I TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: LIST OF EXHIBITORS AT INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.'S 2002 EXPOSITION

Environmental Expert.com Events

Home | Business Center | Publications | Articles | News | Magazines | Upcoming Events
Job Search | Training | Software House | Technology Providers | Tools | Directory

ISRI : Annual Exposition Storefront



For more information

- Request Registration Package
- Visit our Web Site
- Send us an E-mail

Event information

- Event: ISRI's Annual Exposition
- Date: 8-12 April 2003
- Venue: Marriott World Center, Orlando, FL, USA
- Contact Person: [illegible]

ISRI's Annual Exposition Marriott World Center, Orlando, FL, USA

ISRI's 2003 Annual Convention and Exposition gives you the opportunity to demonstrate state-of-the-art equipment and service offerings that can help ISRI members run their companies with maximum efficiency and improved profits.

Information

- Exhibitor Prospectus
- Who Should Exhibit
- Sponsorship Opportunities

Institute of Scrap Recycling Industries, Inc
1325 G Street N.W. Suite 1000
Washington, DC 20005-3104

Exhibitors

Exhibitor Marketing Opportunities

ISRI's Annual Exposition—The Scrap Recycling Industry's No. 1 Trade Show in the World, to be held April 8-12, 2003 Marriott World Center, Orlando, Fla.

Showcase Your Products and Services to 3,000 Scrap Industry Representatives

The Institute of Scrap Recycling Industries presents the world's largest scrap recycling industry trade show each year. More than 3,000 interested buyers of scrap processing and recycling equipment, products and services look forward to ISRI's Annual Convention primarily because this exposition provides them with the most comprehensive industry related shopping experience assembled in a single [illegible] location.

Appendix O

ISRI's 2003 Annual Convention and Exposition gives you the opportunity to demonstrate state-of-the-art equipment and service offerings that can help ISRI members run their companies with maximum efficiency and improved profits.

Exhibitor space goes fast, so sign up today and join us in Orlando in 2003 where the scrap recycling industry will be Exploring New Horizons.

Exhibitor Prospectus

Convention and Exposition Attendance

Expect to see lots of attendees, at least 3,000, probably more. The exposition is the centerpiece of ISRI's Annual Convention. Each year it draws owners as well as senior and middle managers of scrap processing companies, brokerage firms, mills, refineries, and other industrial consumers of scrap commodities. Purchasing agents, financial officers, operations managers, quality control personnel, marketing and sales managers, and environmental engineers also attend.

Show Features

- Indoor exhibition space in the Marriott World Center—205 10' x 10' booths
- Flexible outdoor space to present your equipment—regardless of size—to best advantage
- 7 hours of guaranteed exhibit time scheduled with no competing convention events
- The convention kick-off event—a lavish reception—and at least two other catered events—within the Exhibit Hall and among the outdoor exhibits
- A free listing in *Scrap* magazine
- ISRI's Hospitality Lounge, second in convention popularity only to the show itself, will be located in the center of the Exhibit Hall

Show Hours

Thursday, April 10, 6:30-10 p.m.
Gala Opening Reception

Friday, April 11, 9:30 a.m.-5 p.m.
Exhibit Hall Luncheon

Saturday, April 12, 9 a.m.-4 p.m.
Exhibit Hall Luncheon

Space and Fees

Booth Space
Each 10' x 10' Booth Space
ISRI Members—$3,000

Nonmembers' first space—$5,400*

Each Additional 10' x 10' Booth Space—$3,000
(Members and Nonmembers)

*This figure is equivalent to the member booth rate, plus the ISRI 2003 Associate Domestic Member national and chapter dues rate. In order to qualify for the member rate, exhibitors must be ISRI members in good standing by Feb. 1, 2003. Contact ISRI at 877/FOR-ISRI for information about becoming a member.

Appendix O

Oversize Equipment Space
$10 per square foot when purchased with at least one 10' x 10' booth space or the equivalent cost of that booth space (ISRI members: $3,000; nonmembers: $5,400)

Installation and Dismantling
Booth Space
Begins Wednesday, April 9, 8 a.m.-midnight.* Completed by Thursday, April 10, 2 p.m. All display materials must be removed by Sunday, April 13, 12 noon.

Oversize Equipment Space
Begins Monday, April 7, 8 a.m.-midnight.* Completed by Thursday, April 10, 2 p.m. Dismantling must be completed by Sunday, April 13, midnight.

*Both booth and oversize equipment installation must be prescheduled with the exposition service contractor.

Exhibitors

Who Should Exhibit?

Attendees are interested in seeing—and purchasing—new equipment for processing scrap ferrous and nonferrous metals, paper, glass, plastics, rubber, and/or textiles; vehicles for transporting them; equipment parts and accessories to complement scrap processing equipment; products and services to help sell them, including Internet commerce and computer hardware and software technologies; and anything that will help them operate their companies profitably and efficiently. Financial, environmental, and safety consulting services are all in high demand at ISRI's show. Related industrial products, such as uniforms or employee incentives, also generate sales interest.

You may have a product or service not traditionally known to the scrap recycling industry. All the more reason to exhibit at the Marriott World Center with ISRI. The scrap industry is anxious to try what is new, especially when ISRI will be urging attendees to join the association in Exploring New Horizons.

But there's something you need to know: so successful is ISRI's show that space disappears FAST. Half of all booth spaces for the 2003 show were already sold in mid-April 2002, nearly a year before the actual show!

Popular Exhibitor Products and Services at a Glance

- Scrap processing equipment for ferrous and nonferrous metals, paper, glass, plastics, rubber, and textiles
- Equipment parts and accessories
- Broker services
- Computer hardware and software designed to meet the special needs of scrap recycling operations, including scrap brokers
- Internet commerce providers
- Environmental technology
- Transportation vehicles and services
- Financial and insurance services tailored to scrap recyclers
- Communications services and technology
- Promotional items to assist scrap recyclers in their sales, public relations, and customer service activities
- Business forms
- Innovative technology and other new services scrap recyclers need to know about and purchase
- Business publications and related media

Appendix O

- Uniforms
- Employee Incentives

2002 Exhibitor

Aggregates Equipment, Inc
Al-jon, Inc
Allied-Gator, Inc
Amada Cutting Technologies, Inc
American Baler Company
American Iron & Metal Company, Inc
American & Ohio Locomotive Crane Co
American Pulverizer Company
American Shear Knife Division of ASKO, Inc
Anheuser-Busch Recycling Corp
Ansam Metals Corp
Anvil Attachments
Bakker Magnetics, B V
B E S T , Inc
Bureau of International Recycling (BIR)
Cargotec, Inc
Case Corporation
Caterpillar, Inc
Central Manufacturing Co
Clement Industries, Inc
CNA Commercial Insurance
Columbia Steel Casting Co , Inc
Commodities Management Exchange, Inc
CP Manufacturing
Data Transmission Network (DTN)
John Deere Commercial Worksite Products
ECS Underwriting, Inc.
EDAX, Inc
Enterprise Co
Envirogen, Inc
Erez Magnetics
Esco Corporation
Excel Manufacturing, Inc
Forrester Environmental Services, Inc
FUCHS, A Division of Schaeff of North America, Inc
General Kinematics Corporation
Genesis Equipment & Manufacturing, Inc
Gensco Equipment (1990) Inc
Global Metals, Ltd
Global Recycling
Hagglunds Drives, Inc
Harris Press & Shear
Heartland Aluminum, Inc
Hustler Conveyor Company
Innov-X Systems
International Association of Electronics Recyclers
International Baler Corp
R.M. Johnson Co , Inc
S C Johnson, A Family Company
Keith Manufacturing Company
Komatsu America International Co
LBX Company, L L C
Lefort USA
Liebherr Construction Equipment Co
Logemann Brothers Co
Metal Bulletin, Inc /AMM
Metal Management
Metorex, Inc
Metso Minerals, Inc , Recycling Division
Milton Technologies
MSA ScrapSite
MTB Recycling
NASCO-OP
Ningbo Zhenhai Renewable Resources
Processing Park Development Co , Ltd
Niton Corp
Norfolk Southern Corp
Ohio Magnetics, Inc
Osborn Engineering, Inc
Oxford Instruments America, Inc
Platts
ProfitGuard/Global Commercial Credit
Rad/Comm Systems Corp
Recy Systems, A G
RecycleGuardsm Insurance Program
RecycleNet Corporation
Recycling International Magazine
Recycling Today Media Group
Riverside Products/Newell Riverside
Rotobec USA, Inc
Saint Gobain Crystals & Detectors
Scrap Magazine
ScrapWare Corporation
Sennebogen, L L C
SETCO Solid Tire & Rim Assembly
The Shared Logic Group, Inc
Shred-Tech, Inc
Sierra International Machinery
Solartron Analytical
Spectro Alloys Corp
Spectro Analytical Instruments
SSI Shredding Systems, Inc
Stanley Hydraulic Tools LeBounty Attachments
Steel Recycling Institute
Steinert/Resource Recycling, L L C
Strip Technology, Inc
Sweed Machinery
Systems Alternatives International, L L C
T Y Cushion Tire, L L C
Texas Shredder, Inc
Thermo Eberline
Thermo MeasureTech
Transact Payment Systems
Triple/S Dynamics
Tube City, Inc
Tung Tai Group
21st Century Programming
US Conveyor Technologies Mfg , Inc
US Motor Recycling, Inc
Vezzani USA, Inc

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Ludlum Measurements, Inc
Lynxs Shredder Corp
Mac Crushers/Balers Div of Granutech-Saturn Systems Corp
Mack Manufacturing, Inc
Magnetech Engineering, Inc
Magnetech Industrial Services, Inc
Marathon Equipment Co
Mayer Information Technology
Mayfran International
J McIntyre Machinery, Ltd
Volvo Construction Equipment
Walker Magnetics
Waste News
Wendt Corp
Winkle Industries
Worldwide Analytical Systems, Inc
Young Corporation

How to Purchase Space for ISRI's 2003 Exposition

- Complete and sign the ISRI Contract to Exhibit
- Complete the ISRI Exhibitor Contact Information Sheet.
- Send both forms with complete payment to
- Institute of Scrap Recycling Industries, Inc
  1325 G Street N W , Suite 1000
  Washington, DC 20005-3104
  Note Payment must be by check in U S funds drawn on a U S bank and payable to the Institute of Scrap Recycling Industries, Inc

For Space Availability and Other Information
Contact ISRI Show Manager
Cara Stann, Operations Manager
Telephone 703/998-6003
Fax 703/998-6005
E-mail cstann@msginonsries com

Exposition Floor Plan

- To view or download the exposition floor plan in a PDF file, click here
- Height Limit 8'
- Ceiling Height 23'
- Load Capacity 400 lbs per square foot
- Freight door dock entrance 16'' wide x 18'6'' high

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APPENDIX P — EXHIBIT J TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: ARTICLE FROM RECYCLING TODAY WEBSITE, DATED OCTOBER 10, 2003

U.K. COMPANY CONNECTS WITH STRIP-TEC

10/10/2003

Strip Technology Inc. (Strip-Tec), Fort Worth, Texas, has recently ordered its second container load of alligator shears manufactured by J. McIntyre Machinery Ltd., Dunkirk, U.K.

"Since having been appointed sole agents for the McIntyre shear range only six months ago, Strip-Tec has placed an order for its second container of equipment," a news release from the British equipment maker states.

Strip-Tec president Bobby Alexander says his company is carrying J. McIntyre shears in stock at the company's facility in Fort Worth while also holding a spare parts inventory to offer "excellent back-up support for the McIntyre shear range."

Sally Johnson, J. McIntyre's managing director, has also advised North American buyers to deal only with Strip-Tec for the purchase of new J. McIntyre shears.

"J. McIntyre Machinery is keen to stress that Strip-Tec is now the only company authorized to sell new McIntyre equipment following the demise of our former agent

McIntyre America in 2001," says Johnson, referring to a former Ohio-based distributor.

Johnson has asked recyclers who learn of any North American companies offering new McIntyre shears other than Strip-Tec "or its appointed representatives" to contact Strip-Tec in the U.S. at (800) 426-4126 or J. McIntyre Machinery Ltd in the U.K. at +44 115-900-3650. "These machines may not have been authorized for sale by the manufacturer, and as such may be being sold illegally and without the latest operating instructions, warning labels and operator guarding," Johnson says of equipment offered in North America by someone other than Strip-Tec.

Johnson also says any McIntyre customers who purchased their machines from the prior distributor "are encouraged to register their equipment with Strip-Tec in order to receive information on latest equipment updates and allow McIntyre and Strip-Tec to offer full support and competitive pricing on genuine McIntyre spare parts."

Friday, October 10, 2003

APPENDIX Q — EXHIBIT K TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: PHOTOGRAPH OF PLAINTIFF ROBERT NICASTRO'S RIGHT HAND

APPENDIX R — EXHIBIT L TO CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ. IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS, FILED FEBRUARY 24, 2004: REPORT OF PLAINTIFFS' EXPERT WAYNE F. NOLTE, PH.D., P.E., DATED OCTOBER 24, 2003

- ENGINEERING REPORT -

ENGINEERING EVALUATION OF MACHINE ACCIDENT

ROBERT NICASTRO

VS

MC INTYRE MACHINE

ALEXANDER W. ROSS, JR., ESQUIRE
RAKOSKI AND ROSS
ATTORNEYS AT LAW
76 EAST MAIN STREET
MARLTON, NEW JERSEY 08053-2142

PREPARED BY

WAYNE F. NOLTE, PH.D., P.E.
PROFESSIONAL ENGINEER
PARK VILLAGE
50 VILLAGE COURT
HAZLET, NEW JERSEY 07730
(732) 739-4500

OCTOBER 24, 2003 3-151

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INTRODUCTION

Alexander W. Ross, Jr., Esquire, of the law firm Rakoski and Ross, 76 East Main Street, Marlton, New Jersey requested an engineering evaluation of an accident involvng a McIntyre machine.

Mr. Ross represents Robert Nicastro, Plaintiff, in this matter. Mr. Nicastro sustained a loss of four fingers on his right hand from this accident.

Inspection of the subject McIntyre machine was conducted at Curcio Scrap Metal, 416 Lanza Avenue, Garfield, New Jersey. Photographs and measurements taken at that time are contained herein.

MATERIALS REVIEWED

The following materials were reviewed as part of this evaluation:

1. Product Investigation Guide.
2. Seven (7) color photocopies of photographs showing the machine.
3. J. McIntyre 640 Shear Instruction Manual.
4. American National Standard ANSI Z268.1 A-1978.

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DESCRIPTION OF ACCIDENT

The subject accident occurred on October 11, 2001 at approximately 11:55 A.M. Robert Nicastro started work that morning at 7:30 A.M. He wore a Jets sweatshirt and had gloves on when this accident occurred. He started working at this job approximately thirty years ago. He has been operating the machine involved in this accident since it was received at the plant in either 1995 or 1996.

Mr. Nicastro, just prior to this accident, had been working on the machine on and off that morning. A customer needed his assistance, he stopped work and shut off the machine. He was with a customer for a few minutes and then went back to the machine. When he got to the machine he went to the control box and turned it on.

Mr. Nicastro bent down to pick up a piece of copper and aluminum thin tube radiation approximately three feet (3') to four feet (4') in length. He had been working with this material and cutting it that morning. He bent down to pick up this piece of material and slipped. He does not know what he slipped on. However, his right hand went into the machine and the shear blade came down on his right hand. Mr. Nicastro, who was wearing gloves, lost four fingers in this accident.

DESCRIPTION OF MACHINE

The machine operated by Robert Nicastro at the time of this accident is identified as a J. McIntyre 640

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Shear Machine. It was manufactured by J. McIntyre Machinery, Ltd., Dunkirk, Nottingham, England. The machine contains the serial number 094-95 and was manufactured in 1995.

The machine was purchased through McIntyre Machinery America, Limited, 887-1 Hampshire Road, Stow, Ohio on August 25, 1995.

The machine has an overall length of eighty-six point five inches (86.5") and an overall height of sixty-six inches (66") to seventy inches (70"). The length of the machine, including the guard, is ninety-seven inches (97").

The machine has a blade length twenty-five and one-quarter inches (25-1/4") and a tip to tip blade opening of thirteen and one-quarter inches (13-1/4"). The 640 Electric Shear Machine operates with a force of 3.03 tons. The machine is capable of making seven (7) cuts per minute with the jaw fully open. The same machine can make fifty-three (53) cuts per minute when the jaw is limited to an opening of one and one-half inches (1-1/2").

The machine contains a fixed guard with a base that is parallel to the cutting surface and elevated above that surface eight and three-eighth inches (8-3/8"). The opening under the guard and to the cutting blade was unrestricted.

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The PHOTOGRAPHIC RECORD to this report contains several photographs of the accident machine.

PHOTOGRAPHS l and 2 are views of the machine.

PHOTOGRAPH 3 shows the manufacturer's plate on the machine.

PHOTOGRAPH 4 shows one of the controls for the run of the machine.

PHOTOGRAPH 5 is a view of the machine controls.

PHOTOGRAPH 6 also shows the machine controls.

PHOTOGRAPH 7 is a view of the pedal controls.

PHOTOGRAPH 8 shows the machine guard and the shearing blade.

PHOTOGRAPH 9 shows the handle at thirty-one and one-half inches (31-1/2") in length.

PHOTOGRAPH 10 shows the blade at twenty-four and one-quarter inches (24-1/4").

PHOTOGRAPH 11 shows the opening between the anvil and the underside of the guard.

PHOTOGRAPH 12 shows that the opening is eight and three-eighth inches (8-3/8").

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DISCUSSION

The L. McIntyre Instruction Manual for the 640 Shear Machine addresses the operator guard and indicates that it should be correctly fitted and in place according to illustration A on page 11. The photograph of the machine contained in illustration A on Page 11 shows an opening on the underside of the guard to the cutting anvil. It does not show a guard that protects an operator from contact with the blade. The guard on the machine at the time of this accident was in the same configuration as shown in this instruction manual. Mr. Nicastro had the machine set with a blade to operate at the maximum opening yielding the fewest number of cuts per minute.

The instruction manual also indicates that the shear machine conforms with the American National Standards for scrap metal processing equipment. The American National Standard (ANSI Z268.1-1974) titled "Safety Requirements for Design, Use and Maintenance of Metal Scrap Processing Equipment" expresses its purpose as establishing safety requirements for the design, construction, maintenance and operation of equipment used for shearing, crushing, classifying and compressing metallic scrap materials before, during and after processing.

> "1.1 Scope. The requirements of this standard apply to the design, use, and maintenance of equipment for metal scrap shearing, crushing, classifying, and compressing, and for equipment used particularly in moving scrap materials.

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1.2 Purpose. The purpose of this standard is to establish safety requirements for the design, construction, maintenance, and operation of equipment used for shearing, crushing, classifying, and compressing metallic scrap materials before, during. And after processing."

The Standard further indicates that it is designed to form the basis for safety regulations to be established by federal, state and local government agencies.

"1.3.1 General. This standard is designed to form the basis for safety regulations to be established by federal, state, and local governmental agencies. It is intended to supplement, rather than supersede, such regulations."

The ANSI Standard describes the metal scrap processing equipment known as the alligator shears.

"2.1 Scrap Shearing Equipment

2.1.1 Alligator Shears. This machine consists of a stationary horizontal blade mounted on a base at working height above the floor. The material to be cut is placed upon or across the stationary blade. A moving upper blade is attached to a pivoted arm with power applied to it as a first-class lever. Power may be supplied by a motor through a suitable

mechanical drive that usually includes a flywheel, or by a hydraulic ram with control valves.

The mechanically driven shears provide continuous operation only; the hydraulically actuated shears may be set for continuous operation or may be controlled by the operator to provide for single stroke, reversing, and inching operations. Small alligator shears of the hydraulic type are usually hand fed and can be used as "metal cleaners" in such operations as cracking valve castings to permit separation of dissimilar metal components. Other small metal assemblies are similarly treated."

The ANSI Standard places the responsibility to meet these requirements on the manufacturer of the equipment.

"3.1 Mechanical Design Responsibility

3.1.1 Manufacture. It shall be the responsibility of the manufacturer of new equipment to design it in accordance with the requirements of this standard."

The ANSI Standard also addresses safeguards and addresses such topics as personnel instruction and manufacturer's responsibility.

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"4.1 General

4.1.1 Personnel Instruction. The employer shall train and instruct the operator and auxiliary personnel in the safe operation of the equipment to which they are assigned before starting operation. The employer shall determine by adequate supervision that correct operating procedures are being followed.

4.1.8 Manufacturer's Responsibilities. It shall be the responsibility of the manufacturer to furnish instructions with his equipment which will serve as reliable guidelines for its use and care.

Added safety devices or other improvements to equipment developed by the manufacturer shall be called to the attention of, and made available to, the owners and operators of such equipment. Retrofit of such devices shall be accompanied by suitable operational instruction changes."

The ANSI Standards specifically require a guard be provided at the point of operation to prevent the operator from inserting his hands into the area of operation. The Standard refers the reader to the Appendix, which gives further detail of this guard.

"4.3.1 Guard. A guard shall be provided at the point of operation to prevent the operator from inserting his hands into the area of operation (see Appendix)."

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A copy of the Appendix is for the point of operation guards is contained among the EXHIBITS to this report. In particular, Item A3 titled "Construction" states that the guard shall be wide enough to keep the operator's hands out of the point of operation.

"A3. Construction

Two uprights of 1-inch steel rod are welded to bases of 3/8-inch flat stock about 1-1/2 x 3-1/2 inches bent to conform to the trunnion support or base casting, and secured at the base by screws or bolts in tapped holes. An enclosure guard of 5/16-inch rod is bent and welded as shown in Fig. A1 with spacing between rods of 1 inch or less. The guard shall be high enough to clear the moving arm by at least 1 inch and wide enough to keep the operator's hands out of the point of operation. The two rear uprights of the cage are of pipe or heavy walled tubing whose internal diameter is a loose slide fit over the 1-inch supports. The tubes are tapped 1/4 X 20 inches for thumbscrews about 1-1/2 inches from each end to permit adjustment of the height of the guard. If the shear is used for cutting scrap thicker than 1/2 inch, a heavier gage rod should be used to construct the guard enclosure. Expanded metal may be used in place of the rods, or over them."

The ANSI Standard also addresses protective apparel and accessories and indicates that the operator

is required to wear protective gloves. Mr. Nicastro was wearing gloves at the time of this accident. He indicated at the time of the inspection that he has always worn gloves in operating any of the machines in the shop.

> "4.3.2 Protective Apparel and Accessories. The operator of the alligator shears and his assistant(s) shall be required to wear protective goggles or an approved type of face shield. They shall also be required to wear a leather or the equivalent apron extending to their shoe-tops, or an apron and protective leggings, as well as the universally required gloves, hard hat, and had-toe shoes."

The ANSI Standard also addresses other safeguards such as hand tools, foot controls and supplementary controls.

> "4.3.3 Hand Tools. Feeding of individual small parts to alligator shears during a "metal-cleaning" operation shall, whenever feasible, be accomplished by using pliers or other suitable holders to grasp the parts."

> 4.3.4 Foot Control. The foot switch shall be spring-loaded to return to the "stop" position when the operator's foot pressure is removed. The pedal shall have a protective guard to prevent accidental operation by falling objects or someone accidentally stepping on it.

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> 4.3.5 Supplementary Controls. Supplementary hand switches shall be located within reach of the operator and helper. When these controls are utilized for an emergency stop of the equipment, or for any other reason, they shall require resetting to the "go" position before the foot switch is activated."

The pieces Mr. Nicastro were cutting at about the time of this accident were three feet (3') to four feet (4') in length and were not the type that were so small to require a hand tool. He had the machine on the automatic control and the control box was located within the operator's positional reach. However, this accident did not occur during the operation of the machine, but during the time when Mr. Nicastro was bending down to pick up a piece of metal to be sheared in the machine. It is at this time that the guard provoked the contact with the blade.

The Occupational Safety and Health Administration (OSHA) Safety and Health Standard 29 CFR 1910 for General Industry addresses machinery and machine guarding in Subpart 0 defines the point of operation as follows.

> "§ 1910.211 Definitions.
>
> (1) "Point of operations" means that point at which cutting, shaping, boring, or forming is accomplished upon the stock."

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This same section also defines the term guard.

> "(32) "Guard" means a barrier that prevents entry of the operator's hands or fingers into the point of operation."

The Regulations also define the fixed barrier guard, the inter-locked barrier guard and the adjustable barrier guard.

> "(34) "Fixed barrier guard" means a die space barrier attached to the press frame.
>
> (35) "Interlocked press barrier guard" means a barrier attached to the press frame and interlocked so that the press stroke cannot be started normally unless the guard itself, or its hinged or movable sections, enclose the point of operation.
>
> (36) "Adjustable barrier guard" means a barrier requiring adjustment for each job or die setup."

This same section also defines the term point of operation.

> "(45) "Point of operation" means the area of the press where material is actually positioned and work is being performed during any process such as shearing, punching, forming, or assembling."

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The general machinery requirements contained in the OSHA Regulations include guards to protect the operator and other employees from coming in contact with the point of operation.

> "§ 1910.212 General requirements for all machines.
>
> (a) *Machine guarding*—(1) *Types of guarding.* One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are—barrier guards, two-hand tripping devices, electronic safety devices, etc.
>
> (2) *General requirements for machine guards.* Guards shall be affixed to the machine where possible and secured elsewhere if for any reason attachment to the machine is not possible. The guard shall be such that it does not offer an accident hazard in itself.
>
> (3) *Point of operating guarding.* (i) Point of operation is the area on a machine where work is actually performed upon the material being processed.
>
> (ii) The point of operation of machines whose operation exposes an employee to injury, shall

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be guarded. The guarding device shall be in conformity with any appropriate standards therefor, or, in the absence of applicable specific standards, shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.

(iii) Special handtools for placing and removing materials shall be such as to permit easy handling of material without the operator placing a hand in the danger zone. Such tools shall not be in lieu of other guarding required by this section, but can only be used to supplement protection provided."

The National Safety Council in its "Accident Prevention Manual for Industrial Operations" addresses point of operation guards. It defines guarding as follows.

"GUARDING. Any means of effectively preventing personnel from coming in contact with the moving parts of machinery or equipment which could cause physical harm to the personnel. When discussing power press guarding, the word "guard" is used exclusively for referring to barriers designed for safeguarding at the point of operation. Therefore, the word "safeguard" should be used for a barrier or cover that protects other danger zones."

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The National Safety Council also defines the point of operation.

> "POINT OF OPERATION. That area on a machine where material is positioned for processing or change by the machine."

The National Safety Council recognizes that small openings in a guard may not allow the operator to process materials and therefore the opening must be made larger. When the opening is made larger to accommodate the material being processed, the point of operation must be moved farther from the guarded point. Contained among the EXHIBITS to this report is a section of the text from the National Safety Council on guard openings which discusses the length of the point of operation from the point of access and the vertical opening of the guard. The manufacturer, McIntyre, failed to incorporate in its design a safe distance between the guard opening and the shearing blade.

The American Society of Mechanical Engineers in its text "An Instructional Aid for Occupational Safety and Health in Mechanical Engineering Design" addresses the six basic guidelines that a designer must employ in designing a safe machine. They include the elimination of the hazard, control of the hazard, the training of personnel, warning of the machine and protective equipment.

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1. "Eliminate the hazard from the product or process by altering its design, material, usage, or maintenance method.

2. Control the hazard by capturing, enclosing or guarding it at its source.

3. Train personnel to be aware of the hazard and to follow safe procedures to avoid it.

4. Provide adequate warnings and instructions in appropriate forms and locations.

5. Anticipate common areas and methods of abuse and take steps to eliminate or minimize the consequences associated with such actions.

6. Provide personal protective equipment to shield personnel against the hazard."

The American Society of Mechanical Engineers recommends that the designer realize the equipment designed and manufactured will ultimately be used by human beings; separate groups—the workers who build the machine, the personnel who service the machine and the people who operate the machine.

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"II. PRINCIPLES OF HAZARD RECOGNITON AND CONTROL

A. Appreciating the Capabilities and Limitations of Involved Groups.

At the outset, designers must realize that the equipment or products they are helping create will ultimately be used by human beings. These people vary considerably in both physical and mental abilities. Both products and manufacturing processes have some unavoidable degree of hazard associated with them. One of the first steps for the safety conscious designer to take, therefore, is to identify all of the major hazards which may apply. This constitutes the initial line of defense in their control and minimization. There are a number of identification techniques which have developed and these are discussed in detail by Marshall, Hammer and others.

A designer has to consider three separate groups of people, each of which pose different safety concerns:

1. Workers who will build the product.

2. Service personnel who will install and maintain the equipment and when necessary, repair it or do preventive maintenance.

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3. People who will operate the equipment."

The American Society of Mechanical Engineers recommends that in designing and manufacturing a machine an evaluation process must be undertaken which describes how the machine will be used, the environment in which it will be used and the population that uses the machine.

"C. Evaluating a Design for Safety and Health

Products and systems must be designed not only to function as intended, but also to either continue working or shut off safely when used in reasonably foreseeable alternative ways. This requirement means that engineering analyses must be made in the design/development cycle to determine the forms of misuse, abuse or component failure to which the product could be subjected. Such tests often include laboratory simulations with typical users and models or prototypes of the products. It could also include broader based user surveys of similar products already on the market. The evaluation process should encompass the following seven step approach to ensure that a reasonably safe design will eventually emerge.

1. Describe how the product will be used.

2. Identify the environments where it could be used.

3. Describe the user population..."

The American Society of Mechanical Engineers also gives a machinery safety checklist for designers. The first item on this checklist asks the designer if it is possible to gain access to the point of operation while the power is on.

> "Machinery Safety Checklist for Designers
>
> 1. Is the machine designed so that it is impossible to gain access to the point of operation (or any other hazard point) while the power is on?"

The American Society of Mechanical Engineers recognizes the importance of preventing access to the point of operation and lists this as the first consideration in its checklist.

CONCLUSIONS

It is my opinion, to a reasonable degree of engineering certainty, based upon an examination of the subject J. McIntyre 640 Shear machine and an interview of Robert Nicastro, that:

1. The subject machine was in a hazardous and dangerous condition.

2. The hazardous and dangerous condition consisted of a guard that provided access to the point of operation by the machine operator.

3. The guard on this machine was not sufficient or adequate for its intended purpose.

4. The guard on this machine did not meet the American National Standard Institute requirements for protecting a point of operation on a shearing machine or the Regulations from the Occupational Safety and Health Administration.

5. The guarding on this machine also did not conform with the recognized guidelines published by the National Safety Council and the American Society of Mechanical Engineers for protecting machine operators from the point of operation.

6. The vertical opening of eight and three-eighth inches (8-3/8") below this guard and to the shearing blade required a wide guard so that the operator could not extend his or her arm and hand into the shearing blade.

7. The McIntyre 640 Shearing Machine with the guard as designed, manufactured and provided by McIntyre created a hazard and danger for the machine operator.

8. The hazard and danger of this machine caused this accident.

I reserve the right to supplement my opinion should any further information regarding this accident be supplied.

Wayne F. Nolte, Ph.D., P.E.
Professional Engineer
N.J. Lic. No. 26362
WFN/bg

APPENDIX S — CERTIFICATION OF FRANK CURCIO, OWNER OF CURCIO SCRAP METAL, INC., DATED FEBRUARY 20, 2004

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION

Docket No.: L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, h/w

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names), i/j/s/a,

Defendants.

CERTIFICATION OF FRANK CURCIO

Frank Curcio, of full age, hereby certifies as follows:

1. I am Frank Curcio, the owner of Curcio Scrap Metal, and employer of Robert Nicastro at the time of his accident with the shearing machine.

2. I first heard of this machine while attending an Institute of Scrap Metal Industries convention in Las Vegas in 1994 or 1995, where McIntyre Machinery was an exhibitor. From their booth exhibit, I understood that the shearing machine was manufactured in England, and distributed throughout the United States through their sole US distributor, McIntyre Machinery America.

3. My son, Michael Curcio, ordered the machine from McIntyre Machinery America in Ohio, which held itself out to be "America's Link to Quality Metal processing equipment" from England. See Invoice, attached hereto as Exhibit "A".

4. Additionally, the documentation which came with the invoice provides J. McIntyre Machinery Ltd.'s address in England, along with its phone and fax number. See Documentation, attached hereto as Exibit "B". Therefore, had we needed any repair parts, we would have called J. McIntyre Machinery Ltd. in England, which is where we would call today for repairs or parts.

5. The instruction manual which came with the machine merely has a "McIntyre Machinery America" address sticker covering half of the J. McIntyre Machinery Ltd. address in England printed on the front cover. See Cover of Instruction Manual, attached hereto as Exhibit "C".

6. The instruction manual itself is printed in Britain, because British spelling is used throughout. Page 8 of the instruction manual, attached hereto as Exhibit "D",

also states that the owner and operators of the machine must make themselves aware of both UK *and* USA standards for the use of Scrap Metal Processing; therefore, J. McIntyre Machinery expected their 640 shearer machine to be used in the United States and it was sold to my New Jersey Company by McIntyre's sole American distributor with the knowledge that the machine was to be used in New Jersey.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/
Frank Curcio

Dated: 2/20/04

APPENDIX T — DEFENDANT'S NOTICE OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION, DATED SEPTEMBER 8, 2006

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, husband and wife,

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD.;
J. McINTYRE MACHINERY LTD.; JOHN DOES
1-10 (fictitious names), and XYZ CORPORATIONS
1-10 (fictitious names),

Defendants.

NOTICE OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF PERSONAL JURISDICTION

TO: Alexander W. Ross, Jr., Esquire
Rakoski & Ross, P.C.
76 East Main Street
Marlton, New Jersey 08053

Attorneys for Plaintiffs

Appendix T

SIR:

PLEASE TAKE NOTICE, that on Friday, October 20, 2006 at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorneys for Defendant J. McIntyre Machinery Ltd., shall make application to the Superior Court of New Jersey, Law Division, Bergen County, at the Court House, 10 Main Street, Hackensack, New Jersey, for an Order of the Court dismissing plaintiffs' Complaint for lack of personal jurisdiction pursuant to *R.* 4:6-2(b);

PLEASE TAKE FURTHER NOTICE that Defendant will rely upon the Certification of Counsel, Certification of Sally Johnson and Brief annexed hereto in support of this motion;

PLEASE TAKE FURTHER NOTICE that pursuant to *R.* 1:6-2, an original and two copies of the proposed form of Order are annexed hereto;

PLEASE TAKE FURTHER NOTICE that the Defendant requests oral argument if opposition is presented hereto.

Dated: September 8, 2006

/s/
Steven F. Gooby
DLA PIPER US LLP
379 Thornall Street, 8th Floor
P.O. Box 2940
Edison, New Jersey 08837-2226

Attorneys for Defendant
J. McIntyre Machinery, Ltd.

APPENDIX U — CERTIFICATION OF SALLY JOHNSON IN SUPPORT OF J. McINTYRE MACHINERY LTD.'S MOTION TO DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION, DATED SEPTEMBER 7, 2006

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, husband and wife,

Plaintiffs,

vs.

MCINTYRE MACHINERY AMERICA, LTD.;
J. MCINTYRE MACHINERY LTD.; JOHN DOES
1-10 (fictitious names), and XYZ CORPORATIONS
1-10 (fictitious names),

Defendants.

CERTIFICATION OF SALLY JOHNSON IN SUPPORT OF J. MCINTYRE MACHINERY LTD'S MOTION TO DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION

Appendix U

I, Sally Johnson, hereby certify the following facts:

1. I am the former Managing Director of J. McIntyre Machinery, Ltd, a defendant named in the above-captioned case. As such, I am fully familiar with the facts certified herein.

2. J. McIntyre Machinery, Ltd is a corporation organized and existing under the laws of the United Kingdom. Its principal place of business is in Nottingham, England.

3. Prior to October 2003, J. McIntyre Machinery, Ltd's business included the manufacture of industrial shear machines for use in scrap metal recycling.

4. In October 2003, J. McIntyre Machinery Ltd was divided into two separate business entities - J. McIntyre Machinery Ltd and JMC Recycling Systems Ltd. The manufacture of shear machines was continued by JMC Recycling Systems Ltd, also a U.K. corporation with its principal places of business in Nottingham, England.

5. To avoid confusion, in this Certification I collectively refer to J. McIntyre Machinery Ltd (pre October 2003) and JMC Recycling Systems Ltd (post October 2003) as "McIntyre."

6. I have reviewed the complaint in this action which alleges that a workplace accident involving Robert Nicastro occurred in October, 2001 at Curcio Scrap Metal in Saddle Brook, New Jersey, and that a McIntyre

shear machine was involved in the accident.

7. Based upon information provided to date, it appears that McIntyre manufactured the allegedly involved shearing machine in 1995. If McIntyre made the subject machine, it would have been manufactured in Nottingham, England and shipped to a company called McIntyre Machinery America, Ltd. ("MMA") in Stow, Ohio. However, McIntyre cannot be certain it manufactured the machine in question because McIntyre recently learned that MMA may have copied the designs of certain McIntyre products and sold them in the United States without McIntyre's knowledge.

8. McIntyre is not, and never was, affiliated with MMA. McIntyre is not and never was a corporate parent, subsidiary or affiliate of MMA. Conversely, MMA is not and never was a parent, subsidiary, or affiliate of McIntyre. MMA is an entirely separate business entity and does not, and never has, shared either common owners, managers or employees with McIntyre.

9. Based on the allegations of the complaint that the subject McIntyre shear machine was in use at Curcio Scrap Metal in Saddle Brook, New Jersey in October 2001, it appears that sometime between 1995 and 2001 MMA must have re-sold the subject machine to Curcio, or sold the machine to another entity, which in turn sold it to Curcio.

10. McIntyre had no knowledge of the business dealings between MMA and its customers, including

Curcio, concerning the at-issue shear. McIntyre does not track shipments of its products past those it makes to its own customers -in this case MMA in Stow, Ohio. Moreover, McIntyre does not and did not know who MMA's customers were. McIntyre requested MMA's list of customers several years ago, but MMA refused to provide it.

11. McIntyre did not ship or otherwise transfer the subject machine from Ohio to New Jersey, nor was McIntyre in any way involved or knowledgeable of such a transaction.

12. McIntyre had no written contract or agreement with MMA other than the invoices that accompanied the McIntyre products purchased by MMA.

13. As of 2002, MMA stopped buying McIntyre shearing machines. At present, MMA owes McIntyre in excess of $130,000 for products McIntyre sold and delivered to MMA, but for which MMA never paid McIntyre.

14. McIntyre does not directly market, sell or solicit the business of anyone in New Jersey to buy its products, nor did it ever do so. McIntyre does not, and never did, employ a sales staff in or for the United States.

15. McIntyre does not, and never did, provide maintenance or repair services for its products to businesses or individuals in New Jersey.

Appendix U

16. McIntyre owns no property in New Jersey. It does not maintain an office or conduct any business in New Jersey. McIntyre does not have a telephone number or a telephone directory listing in New Jersey.

17. McIntyre has no employees, officers, or agents located in New Jersey or doing business in New Jersey.

18. McIntyre generates no revenues from and pays no taxes in New Jersey.

19. McIntyre does not maintain a bank account in New Jersey.

20. McIntyre has never had a license to do business in New Jersey.

21. McIntyre does not have a registered agent in New Jersey.

22. McIntyre has never sent an employee or representative to any industry trade show, event or conference in New Jersey.

23. Although it maintains an internet website, McIntyre does not solicit sales or provide a means for residents of New Jersey - or any other state in the United States - to purchase McIntyre products through its website. To date, McIntyre has not knowingly received or responded to any requests for information about its products through its website or electronic mail

from any business or individual located in New Jersey, with the exception of an electronic mail message sent by plaintiffs' counsel in this matter before the complaint was served.

I certify that the foregoing statements made by me are true. I am aware that if any statement made by me is willfully false, that I am subject to punishment.

Dated: September 7, 2006

/s/
Sally Johnson

APPENDIX V — CERTIFICATION OF STEVEN F. GOOBY, ESQ. IN SUPPORT OF MOTION TO DISMISS, DATED SEPTEMBER 7, 2006

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, husband and wife,

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD.;
J. McINTYRE MACHINERY LTD.; JOHN DOES
1-10 (fictitious names), and XYZ CORPORATIONS
1-10 (fictitious names),

Defendants.

CERTIFICATION OF COUNSEL IN SUPPORT OF MOTION TO DISMISS

STEVEN F. GOOBY, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and Of Counsel to the law firm of DLA Piper US LLP, attorneys for Defendant J. McIntyre Machinery, Ltd. ("McIntyre"). As such, I am fully familiar with the facts and circumstances surrounding the within application.

Appendix V

2. I make this certification in support of McIntyre's Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction.

3. Attached as Exhibit A is a true and correct copy of the Plaintiffs' complaint filed on September 17, 2003.

4. Attached as Exhibit B is a true and correct copy of McIntyre's Answer to Plaintiffs' Complaint filed on December 22, 2003.

5. Attached as Exhibit C is the March 5, 2004 transcript of oral argument before the Honorable Elijah L. Miller, J.S.C. and the Court's ruling on McIntyre's original motion to dismiss for lack of personal jurisdiction.

6. Attached as Exhibit D a true and correct copy of Judge Miller's Memorandum of Decision of Motion.

7. Attached as Exhibit E is a true and correct copy of the Order dated March 5, 2004 granting McIntyre's Motion to Dismiss.

8. Attached as Exhibit F is a true and correct copy of the Appellate Division's Decision and Order dated May 26, 2005.

9. Attached as Exhibit G is a true and correct copy of Docket Report for the bankruptcy case of debtor McIntyre Machinery America Ltd., Inc., United States Bankruptcy Court, Northern District of Ohio (Akron), Case No. 01-54707 (the "MMA Bankruptcy").

Appendix V

10. Attached as Exhibit H is a true and correct copy of the February 7, 2003 Report of Trustee in No-Asset Case in the MMA Bankruptcy.

11. Attached as Exhibit I is a true and correct copy of the July 23, 2003 Final Decree in the MMA Bankruptcy.

12. Attached as Exhibit J is a true and correct copy of the Creditors list in the MMA Bankruptcy.

13. Attached as Exhibit K is a true and correct copy of an MMA invoice dated August 25, 1995 that reflects the purchase and sale of a shear machine by MMA to Curcio Scrap Metal.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 7, 2006

/s/
Steven F. Gooby
DLA PIPER US LLP
Attorneys for Defendant
J. McIntyre Machinery, Ltd.

APPENDIX W — EXHIBIT G TO CERTIFICATION OF STEVEN F. GOOBY, ESQ. IN SUPPORT OF MOTION TO DISMISS, DATED SEPTEMBER 7, 2006: PACER DOCKET REPORT FOR THE BANKRUPTCY CASE OF DEBTOR McINTYRE MACHINERY AMERICAN LTD., INC., UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF OHIO (AKRON), CASE NO. 01-54707 (THE "MMA BANKRUPTCY")

U.S. Bankruptcy Court
Northern District of Ohio (Akron)
Bankruptcy Petition #: 01-54707-mss

Assigned to: JUDGE MARILYN SHEA-STONUM
Chapter 7
Voluntary
No asset

Date Filed: 11/29/2001
Date Terminated: 07/23/2003

Debtor
McIntyre Machinery America Ltd., Inc.
895 Hampshire Rd
#G
Stow, OH 44224
Tax id: 34-1789303

represented by **Christopher J Niekamp**
23 S Main St
#301
Akron, OH 44308
(330) 434-1000
Email: cjn@b-wlaw.com

Appendix W

Trustee
Harold A Corzin
304 N Cleveland-Massillon Rd
Commonwealth Square
Akron, OH 44333
(330) 670-0770

Filing Date & Docket Text

11/29/2001
1 Chapter 7 Voluntary Petition. Receipt Number 55537, Fee Amount $200. Filed by McIntyre Machinery America Ltd., Inc. (pdemp, crt) (Entered: 11/29/2001)

12/03/2001
Harold A Corzin added to case (cbeog, crt) (Entered: 12/03/2001)

12/03/2001
Meeting of Creditors. 341 (a) meeting to be held on 1/28/2002 at 09:30 AM at First Energy Building. (cbeog, crt) (Entered: 12/03/2001)

12/05/2001
2 Notice of 341 Meeting of Creditors w/ BNC Certificate of Service Service Date 12/05/01. (Admin.) (Entered: 12/06/2001)

02/05/2002
3 Meeting of Creditors Held on 01/28/02 And Continued For 02/11/02 At 11:30 A.M. (cbeog, crt) (Entered: 02/08/2002)

Appendix W

02/05/2002
Meeting of Creditors Continued. 341 (a) meeting to be held on 2/11/2002 at 11:30 AM at First Energy Building. (cbeog, crt) (Entered: 02/08/2002)

02/12/2002
4 Amended Schedules "B" Filed by McIntyre Machinery America Ltd., Inc. (CC: Trustee) (cbeog, crt) Modified on 2/13/2002 (cbeog,). (Entered: 02/13/2002)

02/13/2003
5 Trustee's No Asset Report. (cbeog, crt) (Entered: 02/14/2003)

02/13/2003
6 Meeting of Creditors Held. (HELD ON 03/18/02) (cbeog, crt) (Entered: 02/14/2003)

07/23/2003
7 Final Decree Administered. (cbeog, crt) Additional attachment(s) added on 7/23/2003 (cbeog,). (Entered: 07/23/2003)

07/23/2003
Bankruptcy Case Closed. (cbeog, crt) (Entered: 07/23/2003)

APPENDIX X — EXHIBIT I TO CERTIFICATION OF STEVEN F. GOOBY, ESQ. IN SUPPORT OF MOTION TO DISMISS, DATED SEPTEMBER 7, 2006: FINAL DECREE IN THE MMA BANKRUPTCY, DATED JULY 23, 2003

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CASE NO: 01-54707-mss
CHAPTER: 7

SSN/TAX ID:

DEBTOR: McIntyre Machinery America Ltd., Inc.

CO-DEBTOR:

FINAL DECREE

THE COURT, IN RELIANCE UPON THE CERTIFICATION OF THE UNITED STATES TRUSTEE, FINDS THAT THE ESTATE OF THE WITHIN DEBTOR(S) HAS BEEN FULLY ADMINISTERED.

THE DEPOSIT REQUIRED BY THE PLAN HAS BEEN DISTRIBUTED.

IT IS THEREFORE ORDERED THAT:

Appendix X

_X_ Harold Corzin IS HEREBY DISCHARGED AS TRUSTEE OF THE ESTATE OF THE ABOVE-NAMED DEBTOR AND ANY BOND REQUIRED PURSUANT TO 11 U.S.C. SECTION 322 IS CANCELLED.

_X_ THE CHAPTER 7 CASE OF THE ABOVE-NAMED DEBTOR(S) IS CLOSED; AND

OTHER PROVISION AS NEEDED.

DATED: 7/23/2003 /s/
BANKRUPTCY JUDGE

APPENDIX Y — DEFENDANT J. McINTYRE MACHINERY LTD.'S RESPONSE TO PLAINTIFF'S FIRST SET OF JURISDICTIONAL INTERROGATORIES, DATED SEPTEMBER 30, 2005

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6857-03

Civil Action

ROBERT NICASTRO and
ROSEANN NICASTRO, husband and wife,

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD.; J. McINTYRE MACHINERY LTD.; JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names),

Defendants.

J. McINTYRE MACHINERY LTD.'S RESPONSE TO PLAINTIFF'S FIRST SET OF JURISDICTIONAL INTERROGATORIES

J. McIntyre Machinery Ltd.'s ("JMM") response to plaintiffs' First Set of Jurisdictional Interrogatories, all in accordance with the applicable orders of the Superior

Court of New Jersey, Appellate Division and Law Division, follows. By providing this response, JMM does not acknowledge, accept, or submit to the jurisdiction of any New Jersey court and specifically reserves all rights to continue to challenge any assertion of personal jurisdiction of this Court over JMM.

GENERAL OBJECTIONS

1. JMM objects to producing confidential, proprietary, competitively sensitive and/or trade secret materials or information without an appropriate protective order assuring that such documents and information will be used solely for purposes of this litigation and will not be disclosed to non-parties.

2. JMM objects to any individual Interrogatory to the extent that the request may be construed to seek information or documents protected by the attorney-client privilege, the attorney work product doctrine, the consulting expert exemption, the exemption protecting communications passing between agents of a party conducting an investigation in connection with litigation, or any other applicable privilege or exemption from discovery under New Jersey law.

3. JMM objects to the Interrogatories to the extent that compliance therewith would require JMM to undertake an unduly burdensome, expensive, or time-consuming search for documents or information.

4. JMM objects to the Interrogatories to the extent that they seek responses relating to time periods outside of the time period relevant to this litigation.

5. JMM objects to the Interrogatories to the extent they purport to require answers from, for, on behalf of, or relating to, any person or entity other than JMM.

6. JMM objects to the Interrogatories to the extent they require JMM to create any document that would otherwise not exist.

ANSWERS TO JURISDICTIONAL INTERROGATORIES

1. Set forth the name, job position, and address of each and every employee, partner or shareholder of J. McIntyre Machinery Ltd. who directed marketing and distribution of J. McIntyre Machinery Ltd. products to the United States, from 1994 to the present.

ANSWER:

Objection. This interrogatory is ambiguous and vague as to the term "directed" and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, no employee, partner, director or shareholder of JMM ever "directed" any form of marketing of JMM products to the United States. JMM provided copies of product information materials to McIntyre Machinery America, Ltd. ("MMA") that JMM used in the United Kingdom, which were altered to reflect MMA' s name and contact information in place

of JMM's contact information. In addition, no JMM personnel were involved in "directing" distribution of JMM products to the United States. MMA purchased JMM products by first sending JMM a purchase order either by facsimile or telephone. The copies of invoices produced with JMM's response to plaintiffs' request for production of documents reflect JMM's sales to MMA during the time period indicated.

2. List all customers, including warranty customers, known to J. McIntyre Machinery, Ltd., its subsidiaries or its exclusive distributors, located in the State of New Jersey.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous, vague, not limited in time, lacks foundation, and is not reasonably calculated to lead to the discovery of admissible evidence. JMM also objects to this interrogatory to the extent it calls for JMM to respond on behalf of its "exclusive distributors" (which JMM presumes to include only those in the United States), which are or were unaffiliated United States companies. Without waiving these objections, JMM has no customers located in the State of New Jersey. JMM further responds that all product warranties were issued and handled solely by MMA; JMM did not warrant its products to MMA's customers.

3. List all trade shows, conventions or conferences in the United States in which J. McIntyre Machinery Ltd. or McIntyre Machinery America Ltd. has

participated from 1991 until the present. Provide the names of all J. McIntyre Machinery Ltd. employees, servants or agents who attended such shows.

ANSWER:

Objection. This interrogatory is overly broad, unduly burdensome, not sufficiently limited in time, ambiguous and vague as to the term "participated," and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, JMM personnel attended the Institute of Scrap Recycling ("ISRI") annual conventions, which were held in Las Vegas, Nevada and other U.S. cities, as the guests of MMA. The JMM personnel who variously attended the ISRI convention were Mrs. Sally Johnson; Mr. Philip Pownall; Mr. David Pownall; Mr. Michael Pownall; and Mr. Mike Willshaw. No JMM personnel ever attended a convention in the State of New Jersey.

4. Identify each J. McIntyre Machinery Ltd. company or subsidiary whose products are, directly or indirectly, marketed or sold in the State of New Jersey.

ANSWER:

JMM objects to this interrogatory on the grounds that the term "indirectly" is ambiguous and vague and that it is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, JMM did not market or sell products in the State of New Jersey.

5. Identify each J. McIntyre Machinery Ltd. company, subsidiary or exclusive distributor that has provided and/or sold goods or services to a buyer in the State of New Jersey.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous, vague, not limited in time, and not reasonably calculated to lead to the discovery of admissible evidence. JMM also objects to this interrogatory to the extent it calls for JMM to respond on behalf of its "exclusive distributors" (which JMM presumes to include only those in the United States), which are or were unaffiliated United States companies. Without waiving these objections, JMM has never sold goods or provided services in the State of New Jersey.

6. For each company, subsidiary or exclusive distributor identified in your answer to Interrogatory No.4, describe the goods or services provided and/or sold and attach copies of all documents regarding such sales, including but not limited to, invoices, statements, warranty registration, shipping documents, or receipts.

ANSWER:

See response to Interrogatory number 4. JMM does not market or sell its products in the State of New Jersey. However, see copies of invoices produced with JMM's response to plaintiffs' request for production of documents that reflect JMM's sales to MMA in Stow, Ohio during the time period indicated.

Appendix Y

7. Describe all services or goods provided by J. McIntyre Machinery Ltd. to any J. McIntyre Machinery Ltd. subsidiary identified in your answer to Interrogatory No.4.

ANSWER:

Not applicable.

8. Describe all policies or procedures by which J. McIntyre Machinery Ltd. companies or subsidiaries, directly or indirectly, access funds from all debt instruments to which J. McIntyre Machinery Ltd. is a signatory.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous, vague, vexatious, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also palpably improper because it lacks any foundation and appears to seek confidential financial information about a United Kingdom company that is wholly unrelated and not probative of a determination of whether that company is subject to personal jurisdiction in the State of New Jersey.

9. Describe every account in your financial cost accounting system that reflects the allocation of expenses incurred in connection with the provision of each service described in your answer to Interrogatory No.8.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous, vague, vexatious, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also palpably improper because it lacks any foundation and appears to seek confidential financial information about a United Kingdom company that is wholly unrelated and not probative of a determination of whether that company is subject to personal jurisdiction in the State of New Jersey.

10. Describe all types of intercompany transfers from J. McIntyre Machinery Ltd. subsidiaries to J. McIntyre Machinery Ltd.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous and vague as the term "intercompany transfers," and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, none.

11. Describe all accounts in your financial cost accounting system that reflect each type of intercompany transfer from J. McIntyre Machinery Ltd. subsidiaries to J. McIntyre Machinery Ltd. identified in your answer to Interrogatory No. 10.

ANSWER:

Not applicable. See answer to Interrogatory number 10, above.

12. Identify all persons who have been signatories on each bank account maintained in the name of any J. McIntyre Machinery Ltd. subsidiary. Your answer should include, and separately identify, all persons with authority to direct that any payment from any such bank account be made on behalf of any such J. McIntyre Machinery Ltd. subsidiary.

ANSWER:

Objection. This interrogatory is overly broad, ambiguous, vague, lacking in foundation and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, none.

13. Identify and provide copies of all tax returns J. McIntyre Machinery Ltd., its subsidiaries, or any entity in which J. McIntyre Machinery Ltd. has an interest, has prepared or filed in the United States, including federal corporate income tax returns, state income tax returns, and state property tax returns.

ANSWER:

None.

Appendix Y

14. For each company or subsidiary identified in your answer to Interrogatory No. 4, describe every type of action each such subsidiary takes that requires J. McIntyre Machinery Ltd.'s approval or authorization, including a subsidiary's budget, its capital or operating expenditures, its entry into a contract or its involvement in other business transactions.

ANSWER:

Not applicable.

15. For each type of action identified in your answer to Interrogatory No. 11, identify the person at J. McIntyre Machinery Ltd. who approves or authorizes such action.

ANSWER:

Not applicable. See answer to Interrogatory number 11, above.

16. Describe all contractual obligations incurred by each J. McIntyre Ltd. subsidiary identified in your answer to Interrogatory No.1 for which J. McIntyre Ltd. is also a guarantor.

ANSWER:

Objection. This interrogatory is overly broad, unduly burdensome, ambiguous, vague, lacking in

foundation, not sufficiently limited in time, improperly calls for legal conclusions and is not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory also does not appear to have any relationship to Interrogatory No.1. Without waiving these objections, none.

17. List all investments held by J. McIntyre Machinery Ltd. in the United States and in particular, in the State of New Jersey.

ANSWER:

None.

18. Set forth any and all communications you have had, including dates and methods of communication, with individuals located in the State of New Jersey, from 1994 to the present, and provide copies of all such communication, including but not limited to, correspondence, sales brochures, telephone calls, e-mails, invoices and statements, and provide copies of such documents.

ANSWER:

JMM has no record and is unaware of any such communications with individuals located in the State of New Jersey.

19. Provide the names, job titles, and addresses of any and all of your employees, servants or agents who do business in the United States, including but not limited to sales persons and repair persons.

Appendix Y

ANSWER:

Objection. This interrogatory is overly broad, vague and ambiguous as to the phrase "who do business in the United States," improperly calls for legal conclusions as to the terms "servants" and "agents," is not sufficiently limited in time and is not reasonably calculated to lead to the discovery of admissible evidence. JMM further objects to this interrogatory to the extent it seeks information unrelated to plaintiffs' attempted assertion of personal jurisdiction in the State of New Jersey. Without waiving these objections, no employee of JMM does any "business," including sales or repairs, in the State of New Jersey or in the United States. At present, JMM sells its products to Strip-Tec in Texas.

20. Set forth all courts located in the United States in which J. McIntyre Machinery Ltd. has appeared as a party or a witness. Provide and any all documents regarding same, including Pleadings, Answers to Interrogatories, Deposition Transcripts, and other discovery responses, along with the name and addresses of attorneys representing J. McIntyre Machinery Ltd. in the United States.

ANSWER:

Objection. This interrogatory is overly broad, unduly burdensome, not sufficiently limited in time or scope, not limited to plaintiffs' attempted assertion of personal jurisdiction in the State of New Jersey, improperly seeks the production of documents that are matters of public record and equally (if not more so) available to plaintiffs than they are to JMM, and is not

reasonably calculated to lead to the discovery of admissible evidence. JMM further objects to this interrogatory to the extent it calls for disclosure of information or materials that are protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Without waiving these objections, JMM responds that it was named as a party in the following cases in the United States:

(a) *Mike Smith d/b/a Empire Recycling v. McIntyre Machinery America, Ltd., Inc., et al.*, Circuit Court of Cabell County, West Virginia, Civil Action no. 99C0326;

(b) *David B. Whitaker*, Kentucky, Civil Action no. 00-Cl-00797;

(c) *Clarence Miller v. McIntyre Machinery America*, Cook County, Illinois, Case no. 00L2745;

(d) *Richard Graham and Margaret Graham*, Massachusetts, Case no. C.A. 99-cv-10145 (PBS).

Dated: September 30, 2005

SIGNED AS TO OBJECTIONS ONLY

/s/
Steven F. Gooby
DLA PIPER RUDNICK GRAY CARY US LLP
Attorneys for J. McIntyre Machinery, Ltd.

APPENDIX Z — EXHIBIT F TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ., DATED OCTOBER 11, 2006

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION
Docket No.: L-6857-03

CIVIL ACTION

ROBERT NICASTRO
and ROSEANN NICASTRO, h/w

Plaintiffs,

vs.

McINTYRE MACHINERY AMERICA, LTD., J. McINTYRE MACHINERY LTD., JOHN DOES 1-10 (fictitious names), and XYZ CORPORATIONS 1-10 (fictitious names), i/j/s/a,

Defendants.

CERTIFICATION OF ALEXANDER W. ROSS, JR., ESQ.

Appendix Z

I, ALEXANDER W. ROSS, JR., ESQUIRE, of full age, hereby certify as follows:

1. I am an attorney at law in the State of New Jersey and am representing the plaintiffs in this products liability case with catastrophic personal injuries. As such, I am fully familiar with the facts stated herein.

2. In order to obtain an address in the United States for McIntyre Machinery Ltd., I went to the website of J. McIntyre Machinery, Ltd., which provides an address of Nottingham, England, UK. See Contents of Website. attached hereto as Exhibit "G".

3. From their website, I sent them an email from my office in Marlton, New Jersey, requesting information on the name and address of an U.S. sales or distribution center. See E-mail dated October 22, 2003, attached hereto as Exhibit "H".

4. On that same day, I received an e-mail in response from J. McIntyre Machinery, advising me that they currently use "Strip Technology" in Texas for the sales of shears and balers. This e-mail also provided contact information for a Bobby Alexander in Fort Worth, Texas. See E-mail dated October 22, 2003, attached hereto as Exhibit "I".

5. Also on the same day, I received an e-mail from Bobby Alexander, stating that he is the "North and South American Representative" for J. McIntyre

Machinery. He also stated that he was contacting me at the request of J. McIntyre Machinery. See E-mail dated October 22, 2003, attached hereto as Exhibit "J".

6. The Summons and Complaint was served via certified mail on Bobby Alexander in Fort Worth, Texas, the admitted representative of J. McEntyre Machinery. Following service in Texas, defense counsel subsequently answered the Complaint on behalf of J. McIntyre Machinery, Ltd. The Complaint was subsequently served on J. McIntyre in Nottingham, England via The Hague Convention.

7. J. McIntyre Machinery is listed as an exhibitor at ISRI's 2002 Convention in Florida. See List of Exhibitors attached hereto as Exhibit "K".

I CERTIFY THAT the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/
ALEXANDER W. ROSS, JR.

DATED: October 11, 2006

APPENDIX AA -- EXHIBIT N TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: J. McINTYRE MACHINERY, LTD.'S RESPONSE TO PLAINTIFFS' REQUEST FOR MORE SPECIFIC ANSWERS TO JURISDICTIONAL INTERROGATORIES, DATED NOVEMBER 16, 2005

November 16, 2005

BY UPS OVERNIGHT DELIVERY

ALEXANDER W. ROSS, JR., ESQ.
RAKOSKI & ROSS, P.C.
76 East Main Street
Marlton, New Jersey 08053

Re: Nicastro v. McIntyre Machinery America, Ltd., et al.

Dear Mr. Ross:

We write in response to your letter dated October 10, 2005 (received October 18) requesting more specific answers to interrogatories and responses to document demands. We disagree with your characterization that the jurisdictional discovery responses of J. McIntyre Machinery, Ltd. ("JMM") were "woefully inadequate and unresponsive." To the contrary, JMM provided reasonable responses to the requests as presented, many of which lacked foundation, contained incorrect presumptions, or were simply not applicable. However, because your October 10 letter clarified several of the discovery requests, changed or broadened others, and since JMM located additional documents concerning

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McIntyre Machinery America ("MMA"), we respond to your letter, without waiving any previously asserted objections, as follows:

Interrogatory no. 1. This interrogatory sought the identities of JMM personnel who "directed marketing and distribution" of JMM products to the United States. Your October 10 letter more broadly seeks the identities of anyone at JMM "who dealt with MMA in any capacity whatsoever." Although this is a different question, the JMM personnel who communicated with MMA's representatives were Sally Johnson; Michael Pownall (now retired); Phillip Pownall; Mike Willshaw (retired, current address unknown); Jason Midgley (former employee, current address: 53 Foston Avenue, Burton On Trent, DE13 0PL); and possibly Geoff Trapnell (former employee who left the company in 1999, current address unknown).

Interrogatory no. 2. JMM's answer to this interrogatory was not "incorrect." First, JMM did not - and will not - respond to this interrogatory (or any other discovery request) on behalf of MMA because JMM has no standing to do so. Any request seeking MMA's knowledge or information should be directed to MMA, its successors if any, or its bankruptcy trustee. Second, MMA's customers were not JMM's customers. Third, MMA did not provide JMM with any records concerning the identity of any New Jersey customers MMA may have had or their warranty information. Fourth, while Curcio Scrap Metal may have possessed a JMM product on the date of the alleged accident, Curcio was not a customer of, or known to, JMM.

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The "intent" of this interrogatory as described in your October 10 letter differs from the plain language of the interrogatory. The original interrogatory asks for a list of all customers known to JMM and MMA that are located in New Jersey, which is quite different than a request for "the names and addresses of all companies known to JMM which have its products in the State of New Jersey." Regardless, JMM responds to the purported "intent" of this interrogatory by stating that it is unaware of the identities of any such companies, with the possible exception of Curcio Scrap Metal, which JMM learned of only through the allegations asserted by plaintiffs in the case. As stated above, Curcio was not and is not a customer of JMM, JMM never had business dealings with Curcio, and JMM lacks sufficient knowledge or information to confirm whether Curcio was a customer of MMA.

Interrogatory no. 3. JMM further responds to this interrogatory as follows: Upon information, belief and the recollections of JMM employees, the referenced JMM personnel attended the following ISRI conventions:

1990	New Orleans	Michael Pownall
1991	Las Vegas	Michael Pownall
1992	Michael Pownall attended the ISRI convention, which JMM believes, but cannot confirm, was held in either in Washington D.C. or Los Angeles	

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1993	Orlando	Michael Pownall
1994	Las Vegas	Michael Pownall
1995	Las Vegas	Michael Pownall
1996	Orlando	Michael Pownall
1997	Las Vegas	Michael Pownall
1998	San Francisco	Michael Pownall
1999	Orlando	Michael Pownall, Sally Johnson, Mike Willshaw
2000	Las Vegas	Michael Pownall, Sally Johnson, Mike Willshaw
2001	San Antonio	Michael Pownall, Sally Johnson
2002	Las Vegas	Michael Pownall, Sally Johnson
2003	Orlando	Phillip Pownall, Sally Johnson
2004	Las Vegas	Phillip Pownall, Michael Pownall
2005	New Orleans	Phillip Pownall

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In addition, JMM personnel also attended the following exhibitions and conferences:

The Minerals, Metals and Materials Society (TMS) Annual Meeting and Exhibition

1999	San Diego	David Pownall
2000	Nashville	David Pownall
2001	New Orleans	David Pownall
2002	Seattle	Harry Perry
2003	San Diego	David Pownall
2004	San Francisco	David Pownall; Jason Midgley

Aluminium USA conference

2003	Chicago	David Pownall; Jason Midgley

Aluminium Association Annual Meeting

2004	Tucson, Arizona	David Pownall; Jason Midgley
2005	Naples, Florida	David Pownall; Andy Gibbs

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National Manufacturing Week Exhibitions

2005	Chicago	David Pownall; Andy Gibbs

Interrogatory no. 4. As stated in JMM's answer to this interrogatory, JMM did not sell its products to any entity in the State of New Jersey. JMM received no information or records from MMA about any sales MMA may have made in the State of New Jersey. Requests for such information should be directed to MMA, any successor entity, or MMA's bankruptcy trustee.

Interrogatory no. 5. This interrogatory sought the identities of "each J. McIntyre Machinery Ltd. Company, subsidiary or exclusive distributor" that sold goods or services to a buyer in New Jersey. However, your letter now seeks the identity of "*any entity in the United States* that has sold JMM products to customers in the State of New Jersey," which is a different question. As stated in JMM's answer to this interrogatory, JMM did not sell JMM products to anyone in the State of New Jersey. Although MMA may have resold products it purchased from JMM to a buyer in New Jersey, JMM received no information or records from MMA about any such sales, nor does JMM have information or records concerning "any [other] entity in the United States" that may have sold a JMM product in New Jersey.

Interrogatory no. 6. JMM is unable to locate any formal purchase orders received from MMA. However, see printouts of electronic mail between representatives

of MMA and JMM produced herewith related to MMA's product orders, inventory, and other issues. See also copies of various correspondence and documents related to the business dealings between MMA and JMM. JMM has no other documents responsive to this request in its possession or control. Upon information and belief, additional documents may exist that are responsive to this request, but they would be contained in the large volume of JMM's business records that were appropriated by the receiver appointed to oversee the receivership of JMM's former parent company, Nottingham Metal Recyclers Ltd.

Interrogatory no. 7. No JMM subsidiary was identified in interrogatory no. 4. Thus, JMM stands by its "Not applicable" response to this interrogatory.

Interrogatory no. 18. With the possible exception of what we understand to have been a surreptitious e-mail from you to JMM prior to serving it with the complaint, JMM has no record of any communications with individuals located in the State of New Jersey.

Because JMM was unable to locate the original e-mail message you sent - and a printout of same was not provided with your appeal papers or otherwise - we are presently uncertain if you identified yourself in the e-mail as being from New Jersey, or if you disclosed in the e-mail that you were an attorney who had recently instituted a New Jersey lawsuit against JMM. Accordingly, we request that you immediately provide us with a printout of your e-mail to JMM (and copies of

any other written or electronic communications you or your agents may have directed at JMM).

Interrogatory no. 19. Your conclusion that JMM "did business in the United States; and specifically, in the State of New Jersey" by Mr. Pownall's response to an electronic mail message sent by you, a plaintiff's attorney who had recently instituted - but not yet served - a lawsuit against JMM, is wholly unsupported by any legal authority.

Without waiving any previously asserted objections to this interrogatory, JMM reconfirms that it does not do and has not done any business, including sales or repairs, in the State of New Jersey. However, JMM Commissioning Engineer Robin Walker has performed installation services of JMM "TARDIS" systems, which are used for rapid cooling and recovery of aluminum from aluminum dross, in the States of Virginia, Illinois, Washington, Iowa, and Kentucky.

Interrogatory no. 20. Please see enclosed copies of various non-privileged documents from the lawsuits identified in JMM's answers to interrogatories.

Request for Production of Documents

With regard to your further request for production of purchase orders, see JMM's further answer to Interrogatory no. 6, above.

Request no. 2. See further response to Interrogatory no. 3, above. JMM has never had any

"sign up" lists or similar documents from any conventions in the United States. Any requests for information by attendees at United States trade shows or conventions would have been handled directly by MMA personnel. Thus, any such information or documentation should be in the possession or control of MMA, its successors if any, or MMA's bankruptcy trustee.

Request no. 4. See further answer to Interrogatory no. 6, above.

Request no. 5. JMM stands by its response to this request. It is JMM's position that any communications or financial information concerning JMM's relationship with its current United States independent distributor in Texas is not only irrelevant to plaintiff's attempted assertion of personal jurisdiction over JMM in the State of New Jersey, but is vexatious, oppressive and improperly seeks current confidential business records, the disclosure of which could competitively harm JMM and other entities not parties to this action. Upon a showing that the materials sought in this request are relevant and with plaintiff's agreement to enter an appropriate confidentiality agreement, JMM will reconsider its response to this request.

Very truly your,
/s/
Steven F. Gooby

SFG/la
Enclosures

APPENDIX BB — EXHIBIT O TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: EMAIL FROM MARY GAITHER TO SALLY JOHNSON, DATED MAY 3, 2000

From: Mary Gaither <takeme2oz@nls.net>
To: Sally Johnson <sally.machinery-jmcintyre@btinternet.com>
Date: 03 May 2000 00:50
Subject: CONTAINER LETTER

Hi Sally,

Well, things are not looking good for the 200 customers. I will need that letter from you as soon as possible and if you have some 200 blades on hand it would be a good idea if you put them in the container to us, as we are going to need them if we are going to save 3 of these deals. It is really a shame that this had to happen. I understand that it was not intentional on your part, but this customer ass kissing stuff really stinks! Needless to say the boys were pretty upset with the whole situation. I understand what you said about wanting your employees to be protective for your company, but we need to make sure between the two of us that this kind of thing never ever happens again. Please let me know where you would like the money wired to if you have changed over to your new bank.

Also, we REALLY need some more literature for the shears. This new sales guy of mine is really shaking things up! You and I will need to discuss the contents of another container very soon. I know that 200's will be a must, so you can go ahead and start making those for sure. I believe that you said it was best to build them in

lots of 5's. I will venture to say that we will want at least that many, probably more. We also need to address the pricing for the model 200's that appears on the invoice that I (finally) have received. It came over the fax on Friday about noontime. All the 320's and 407's pricing is correct as we agreed in Vegas, but the Model 200's are priced $40 higher then we agreed. Will you need to issue me a credit for these, or do you want to send over a revised invoice? Please let me know. Also, model 320's sales seem to be on the rise. What is the most cost effective number of those for you to build at a time? Also, could you please give me pricing on the Trent 170's? I need to know if it is going to be worth it to sell those here in the states. As I recall, neither one of our companies was making very much on the sale of one. If that is still the case then we will have to look elsewhere for a stripper to sell until you have the time to devote to manufacturing one yourselves as opposed to going through Russell.

I received a letter regarding our payment of the two booths we reserved for the ISRI 2001 convention in San Antonio. Are we still in agreement that we do not need two booths? We all feel that one booth will be sufficient. Please let me know what your thought's are right away so Ican get a check off to ISRI before we lose the booth space that we requested. Well, that's all for now I think. Hope you had a good weekend. Talk to you soon.

Best Regards,
Mary
03/05/00

APPENDIX CC — EXHIBIT P TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: UNDATED LETTER FROM GARY AND MARY GAITHER TO MICHAEL POWNALL

Mr. Michael Pownall
J. McIntyre Machinery Ltd.
Unit G, Acorn Park Industrial Estate
Harrimans Lane
Dunkirk
Nottingham, NG7 2SD England
011-44-602-422-333
Fax: 011-44-602-862-017

Dear Michael,

This letter is in response to the conversations that we have had over the past few weeks regarding the past, present, and future relations between J. McIntyre, England and McIntyre Machinery America. We have enjoyed the friendship that we have built with you and Annette over the past 8 years. As we discussed, our present situation is the result of a number of unresolved issues on both sides. We will do our best to state our position as well as our wishes for the future here in our letter to you.

When we started our own company back in 1994, we were naive to the many aspects involved in owning a business. We have learned many things the hard way, but, believe that we are stronger because of it. We have always looked up to you and have appreciated the business knowledge that you have shared with us on numerous occasions

over the years. In short, we have been listening and we have structured our advertising and sales efforts in accordance with your direction and guidance whenever possible. We never received any monetary aid with regards to the advertising of your machinery in the states, perhaps we should have brought that point up from the beginning. That is all hindsight now.

We introduced Niagara to America in 1997, and as you are aware, that system never achieved a viable status. In your own words it is a piece of junk that you no longer wish to sell and we would do better to piece together our own system for sale in the States and elsewhere. Also at the ISRI show in Vegas in 1991 we introduced the McIntyre wire stripper. Once again we marketed and advertised a product, as well as paid to have it shipped to the show along with all the other machines for display in the booth. In the end we were unable to produce it for sale in the States. The long production time coupled with the lack of substantial monetary compensation to either one of our companies all factored in and today these machines are currently being offered for sale through our competitor, Rigby Machinery. Their "success" here in the States can not be credited to our expensive marketing and sales efforts since we upheld our loyalty to you and turned Russell down cold when he approached us directly about selling "our own" cable stripping machines. We have never understood what happened with regards to * * * even though we have inquired about the current relationship status on numerous occasions we have not heard any definitive explanations.

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That brings us to Tardis. We introduced Tardis to the U.S.A. in 1996 in Florida and again in 1997 and 1998 in Vegas and San Francisco respectively. As you are aware in 1996 we were all served a legal summons at the convention by Alteck naming us all in a major patent lawsuit. Our years of "Tardis Hell" began that day.

We advertised, marketed, traveled for and freighted it, or parts of it, out to 3 different conventions as well as to several demo sites, all to no avail. For whatever reasons after 4 years of advertising, marketing, traveling and enormous amounts of time spent defending ourselves against the lawsuit accusations, we again walk away without any monetary compensation for our efforts. On this point we have been constantly accused of "whining" when what we should be doing is putting the whole thing behind us and just sit back and wait patiently while our successors, Pyrotec, sell Tardis in the States. I suppose this would be much easier for us if we had never been promised that this was the machine that was going to make us all a good living it we were just willing to work hard to get it off the ground. Our company is not made up of multiple division and when Tardis sales in the States did not happen, we did not have the income generated by sales of machinery into other countries to make up the losses for us.

After exhausting ourselves and our personal bank accounts, we were left with nothing but promises of "some kind of involvement" in the future of Tardis sales and service along with a scolding for allowing ourselves to get in over our heads financially. We would NEVER

have invested the amounts of time, energy and money that we did if we had not believed that we would, in the end, be compensated for our efforts. Also we certainly would have never leased the size building that we occupy if we had not expected to handle the importing and servicing of Tardis here in the States. We did not simply imagine the promises that were made to us. It has, however, become apparent that our time of involvement with the Tardis line has long ago come to an end. The fact of the matter is that we have paid out some $350,000.00 plus in actual advertising, convention, freight and travel charges associated with the 3 afformentioned machinery lines. What sales do we have to show for it? Can you really put all the blame on us for not trying hard enough? The fact that we have stuck it out and never quit must be worth something. That dollar figure does not even take into consideration all the hours, days and months that we all were forced to dedicate to talking to various lawyers and our travel time. It also does not include machinery repairs and warranty issues that we have handled over the years without any monetary assistance from anyone. We simply believed that if we worked hard and believed in our efforts it would pay off in the end. We are tired of promises and half truths. You know that we are not dishonest people by nature. We are proud of the reputation that we are striving to build for ourselves and our company, as well as for your company.

We have taken several steps to protect ourselves in the future. We have secured our own separate liability coverage which will cover any and all machinery that we sell. We also agree with you regarding the sale of can

machines, no more should be sold in the States. There are just too many problems associated with them and Americans do not seem to be able to stop tinkering with them. Since we are locked into a long term lease for the large facility we occupy, we must come up with some type of business use to utilize this space to make it cost effective. It is ideal * * * That is how we have survived during the past year and a half since the scrap metal market took a severe nose dive. We have also taken the necessary steps to shift the ownership of our company stock in favor of Mary, thus qualifying us as a minority owned business. This point will allow us first rights as a woman owned business to all U.S. government bids that are offered. As we discussed, the Model 640 is ideal for munitions destruction. This is certainly an area which we plan to pursue.

We are open to working with you in regards to procuring, refurbishing and exporting any type of machinery that you think you can sell into the U.K. or elsewhere. We are also interested in working with you to develop new products to sell here in the States. We have established a name for ourselves in the States that both of our companies can benefit from if we can find the means to put our relationship back on the right track. We would be most interested in coming together in a joint venture to design and manufacture a wire stripper here in the States. There certainly is a need for a reliable and well made wire stripper here in the States. With regards to your existing machinery line, we are willing to discuss an arrangement where as we would pre-pay all future machinery containers. We are currently paying

for parts up front prior to shipment to us via credit card. We also have the 2 booths at the ISRI convention to consider. We have already placed full page ads in both Scrap and Recycling Today advertising the full line of McIntyre Machinery.

The only real question left is can this relationship be saved? We have done our best to state our position to you here in this correspondence. We hope that we have been successful and that after careful consideration to all items stated you will grant us a fair and honest reply.

Very best regards,

/s/
Gary & Mary Gaither

APPENDIX DD — EXHIBIT Q TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: EMAIL FROM SALLY JOHNSON TO MARY GAITHER, DATED APRIL 26, 1999

From: Sally Johnson <sally.machinery@jmcintyre.btinternet.com>
To: takeme2oz@nls.net <takeme2oz@nls.net>
Date: 26 April 1999 14:54
Subject: Re: REPLY Re: Bank transfer

Hi Mary

Thanks for your message - but no, we haven't received the Timco money yet. I seem to remember waiting about six months for it last time! Thanks for the invoice which can now be processed through our books.

I've had the meeting with the loss adjuster who now has all the information relevant to the claim, including the last fax from Mark Bemlohr. He will now be recommending that the lawyers go ahead and fight the case. The 320 shear is covered by our product liability insurance - so if the 320 is found to be in any way defective, then the buck will pass through Alan Ross to yourselves and down to us and our insurers will of course pay out.

However, since McIntyre America and Alan Ross have been sited separately, it is very important that you as individual companies respond to the action on your own behalves. Our insurance does not, for example, cover any alterations you or Alan Ross might make to the

machines once they leave our works - or any comments you might make in the course of the transaction with the customer which may, for example, imply that a 320 shear could be used for cutting up a piece of bakelite, say, which then shatters and pokes someone in the eye. This would have to be covered by your own insurance. At this stage, basically, noone knows what is going off and liability has to be established. If for any reason McIntyre America, or Alan Ross, are found liable due to any action they might have taken - which is highly unlikely - then our insurance will of course not cover it. The likely course is that Alan Ross will say, McIntyre America sold it to me and I did nothing to change it in which case liability passes to you, who say, well we didn't do anything, the product was built and designed by McIntyre Machinery in the UK and the buck stops here - if there's something wrong with the machine. You will have to appoint your own lawyers in the States to deal with the claim and get it moving along those lines. American law - who needs it?! Hope this helps,

Regards

Sally

Appendix DD

—Original Message—

From: takeme2oz@nls.net <takeme2oz@nls.net>
To: Sally Johnson <sally.machinery-jmcintyre@btinternet.com>
Date: 23 April 1999 22:49
Subject: REPLY Re: Bank transfer

Hi Sally,

Got your e-mail. I understand what we discussed at ISRI regarding the TARDIS commissions. We realize the implications for you if we take a commission for a machine before you have been paid by the customer for it. We do not plan to collect our commissions in this fashion on an ongoing basis. In this instance, Andrew Stein stood on the booth in Orlando on Saturday, April 17th, and stated that all the work at Timco had been completed by your service tech and he stated that he would be making full payment to J McIntyre Machinery England on Monday for the TARDIS unit that came out of our facility. That is the reason why we deducted the amount from our cable transfer to you this week. We are short on cash flow from the ISRI convention expenses that we had to pay out of pocket for what, as you are aware, was a very poor show. We have never been to a show where we literally went home without any concrete leads or sales. Not your problem, I know, but a fact none the less. We have no problem waiting for you to receive payment from the customer first before requesting our commission via a company invoice in the future. It was not our intention to upset you or your books over in England with our actions. That's why I paid you for the

407 shear, that we just got payment for by check, even though it has not even had time to clear our bank! We have all worked very hard to build up confidence in each other and we have no desire to jeopardize those strides. I have faxed over an invoice for the commission today, and I will send you out a hard copy in the mail.

With regards to the control box and pot, boy are we confused. When David was here in our facility he personally viewed the already damaged control box and was completely aware of it's condition. We offered to help with any cosmetic repairs to the machine that needed to be done and he stated that J. McIntyre England would make all necessary repairs to the unit on site and he did not want us to spend any more time or money to assist in preparing it for delivery toTIMCO. That unit left our shop looking EXACTLY as it did when David visited us. No further damage was made to the TARDIS unit from the time it left here until when it reached Timco that we have been made aware of. As for the pot, why did you give them a free pot? We still have a pot here that we are waiting for them to pick up since they could not fit it on the truck they sent to pick up the TARDIS unit. Perhaps there is some miscommunications happening here. It was our understanding that they (Timco) would send another truck to pick up the remaining pot ASAP, so we have had it sitting outside for pickup ever since. Let us know what you want us to do with it. As always, we will be happy to assist.

We are, of course, extremely disappointed to hear that the container may be delayed. It is of course very difficult to sell a product that you can not deliver. We have

received preliminary reports from our distributors stating that they did have some inquires for shears at the show. No one has asked for a firm order yet, but we will of course need to know what the time frame for delivery to us will be if a delay on your end is in fact necessary.

Lastly, the issue of the insurance claim. In the papers I faxed to you today, there is a typo where it lists our company (McIntyre America) twice as defendants. They have since clarified that and J. McIntyre Machinery England has been formally named as defendants in the suit as well. Our lawyer says that this is a big problem for all of us if we are not represented in Boston on May 23rd since it would constitute default on our part and we would ALL be personally liable for the automatic $2,000,000 judgment! And we thought our credit line was maxed out now, HA. Not really funny if it should come to that. All of us desperately need your insurance company's lawyer to contact the court AS SOON AS HUMANLY POSSIBLE so we can get this matter under control. I will look to hear from you on Monday after your meeting.

Regards,

Mary

Sally Johnson wrote:

Hi Mary, Mike has just handed me your fax regarding the bank transfer. We discussed this at ISRI. We simply cannot accept contra's for commissions, when

APPENDIX RR — EXHIBIT R TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: FACSIMILE LETTER FROM MICHAEL POWNALL TO GREG, DATED NOVEMBER 23, 1999

To: Greg From: Michael Pownall

Company Name: McIntyre America

No. of Pages: 1 Date: 23 November 1999

This is just to confirm our telecom of today. As you know, we are unhappy with the present situation. All we wish to do is sell our products in the States - and get paid! If this isn't possible then the only other option open to us is for us to split up in an amiable fashion as quickly as we can. I note that you still have new machines in stock, which you are presently unable to sell. Please note that those machines are our property until they have been paid for in full.

Please get Gary or Mary to contact me as a matter of urgency.

Regards

/s/
Michael Pownall

APPENDIX FF — EXHIBIT S TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: LETTER FROM SALLY JOHNSON TO GARY AND MARY GAITHER, DATED JANUARY 13, 1999

To: Gary/Mary From: SALLY

Company Name: McIntyre America

No. of Pages: Date: 13 January 1999

Dear Mary,

I'll use the fax rather than email. I'm not convinced that you ever get any of my messages!

I have spoken to the Boss regarding your last email, and we both agree that it is time he and I came over to visit you to see how we can get things back on an even keel and move the businesses forwards. As such we will be over within the next few days - could you let us know what dates would be most convenient for you and we will try to fit in with those?

In the meantime, we will arrange for collection of the remaining TARDIS, and ancillaries, and for collection of the Alpack which should help to get your storage costs down. I note also that you have 3 640s unsold which I understood to have been sent out against firm orders - otherwise we wouldn't have built them! Perhaps we should also look at bringing a couple of those back also. It is important for us to try to turn some of your stock into cash as quickly as possible, since it is presently

costing us £20,000 per year to fund it. If we can get the stock levels down, then we could look again at machine costings and perhaps in the short term try to send out fewer machines but give you more margin on them.

With reference to TARDIS I think that we all expected the machine to sell better in the States, and we are still confident that it will - after all, Altek have now sold 80 units into America. Unfortunately, it is impossible for us to let you know exactly what you can expect to earn out of TARDIS in the future — we've got to sell some first.

We are all too aware that in the present climate there is no money to be earned out of small shears and balers. Unfortunately, McIntyre UK hasn't been able to earn money out of them for several years - when the States has been good, the rest of the world has been lousy! It is for this reason that we pushed all of our efforts into TARDIS, recognising that we had to diversify. (can fully understand your looking into other business areas and see no reason why this should affect our relationship, providing they don't stop you from selling all the small shears it is possible for you to sell - and servicing all the TARDIS it is possible for you to service! But these are all matters which can be discussed better face to face. Let us know when we can visit. Talk to you soon.

Regards

Sally

APPENDIX GG — EXHIBIT T TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: LETTER FROM SALLY JOHNSON TO GARY AND MARY GAITHER, DATED JANUARY 13, 1999

To: Gary/Mary From: SALLY

Company Name: McIntyre America

No. of Pages: Date: 13 January 1999

Hello there,

Sorry to hear about the weather at your end. It's snowing here at the moment, and being the UK, about 1/2cm snow constitutes a national emergency! Mike has asked me to contact you about a number of things relating to his conversation with you yesterday and your subsequent email message. Obviously we are all trying to deal in difficult times at the moment, and we need to support each other as much as possible. I don't know what has happened with respect to spare part payments and Helen tells me that you are unable to pay for spares. Obviously this concerns us, and we need to sort out some way of going forward. We have invoices dating back to Feb 98 which are not in dispute, together with even earlier ones which need agreeing, or not, as the case may be. We will have to know when you intend to remit this outstanding money. Also, Mike tells me that he has asked for a stock update and we haven't yet received it. This was needed for our accounting procedures and is now urgent. Any stock which has been unsold for some time, especially for example the TARDIS 1061 and

ancillaries needs to be returned back here, at our cost, to get your stock levels to an acceptable level.

I can fully understand your reluctance to visit Nottingham in the present climate, and agree that there is plenty for us to discuss. As such, I have asked Mike to arrange to visit you within the next two to three weeks to clarify the spares/stock situation and try to get things moving before ISRI. In terms of finding something else to sell - don't think that we haven't been racking our brains to think of something, and any input would be appreciated. We have looked at trying to redesign the shears/balers, but the market just doesn't seem to be there, regardless of what the machines look like or their final selling price. Personally, I think that we may have to look outside the scrap metal trade, but generating new product ideas isn't that easy!

As far as TARDIS is concerned, we simply cannot afford to continue at our present sales level in the States. We had to accept ourselves that TARDIS selling was for specialists. As such we have appointed sales agents around the world which are actively involved in the foundry industry, and a TARDIS sales director here who has been selling furnace equipment for 20 years. He was immediately able to make the inroads into the likes of Alcoa and Alcan, which we have been trying to make for the last three years! Our sales director, Harry, is fluent in Portuguese, and has taken over control of the South American market as part of his remit. As I understand it - and David isn't here at the moment and in a completely different time zone - David has appointed

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Pyrotech to sell TARDIS in the States in line with our policy of appointing foundry equipment supply companies to sell TARDIS. Pyrotech therefore become the TARDIS sales agents, handling all sales, marketing, exhibitions etc. His idea is then that sales in the States will start to come in, as they have from the rest of the world, and that McIntyre America can take over the after-sales support, commissioning, service etc - obviously at an attractive rate. The agreement is fairly loose at the moment and needs tightening up at a later date, but we feel that anything is possible once we sell a few of these machines. There is then margin in it for all of us. We were approached by Pyrotech and feel that we have to give it a go for all of our sakes.

With respect to TMS, Pyrotech have a stand there and have asked that we support it with a TARDIS machine. David will be attending the show with Harry, and would of course be pleased to receive a visit from you!

I agree that it may be the time to attend ISRI without machines in order to keep costs to a minimum and look forward to hearing your ideas for the show - so long as I don't have to wear a bikini I'll be happy!

Mike will liase with you regarding his trip. It would be nice to get together, get the backlog cleared up and make a new start. Talk to you soon,

Regards

Sally

APPENDIX HH — EXHIBIT W TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: REPORT OF JAMES F. CUZZUPE, P.I., DATED OCTOBER 7, 2004

SUBJECT: Robert Nicastro

TO: Rokaski & Ross, P.C.
Alexander W. Ross, Jr., Esq.
76 East Main Street
Marlton, N.J. 08053-2142

FROM: James F. Cuzzupe, P.I.

DATE: October 7, 2004

CASE NO.: 2004-37-A

Circumstances: Robert Nicastro sustained a loss of four fingers on his right hand from an accident that occurred on October 11, 2001. Robert Nicastro was in the employ of Curcio Scrap Metal, 416 Lanza Avenue, Garfield, NJ, when he was operating a J. McIntyre Shearing Machine when this accident happened.

Job: Contact scrap metal recycling plants within the State of New Jersey to see if they use any type of machinery manufactured by the J. McIntyre Company, specifically, a sheer machine to cut metal, a.k.a. "alligator shearing machine".

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Summary: Investigation finds Strip Technology Inc. (Strip-Tec), Fort Worth, Texas, provided the names of four business establishments in New Jersey that their company has sold J. McIntyre Alligator Shears to. The only verification of J. McIntyre Alligator Shears at any of the four company names provided by Strip Technology Inc. was at Cinelli's Scrap Metal.

Previous Report: A previous report dated September 27, 2004, has been submitted to your office in this matter.

Requester Contact: On September 30, 2004, your office (Tom McHugh) was in contact with me. Instructions were given to continued this investigation and pursue any additional scrap metal companies that may have J. McIntyre shearing machine.

OCTOBER 5, 2004 (Tuesday)

Bob Alexander
c/o Skip Tec
Fort Worth, Texas
1-800/426-4126

On October 5, 2004. I dialed 1/800/426-4126 and spoke with a male who identified himself as Bob Alexander, sales representative for Skip Tec.

I asked Mr. Alexander for a customer list of New Jersey customers who purchased J. McIntyre machinery, more specifically, the shearing machine. Mr. Alexander provided the following information -

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(Telephone Directory listing - 609/465-7406)

a) Raff recycling, Cape May Court House, New Jersey

b) Curcio Scrap Metal, Saddle Brook, N.J. (Telephone Directory listing - 973/478-3133)

c) Cinelli Scrap Metal, Hackensack, N.J (Telephone Directory Listing -169 McKinley Ave., Hackensack, N.J. 201/488-2588) 250 Division Place, Hackensack, N.J. 201/487-5353

(Mr. Alexander, Strip Tec, indicated a recent purchase was made by Cinelli's within the past two months.)

d) Max Weinstein Scrap Metals, Union, N.J. (Telephone Directory Listing - 908/686-8236)

OCTOBER 6, 2004 (Wednesday)

Raff Recycling
Goshen Road
Cape May Court House, N.J.
609/465-7406

On October 6, 2004, I talked to Steve at Raff Recycling. Steven informed that their "Alligator Shears" is a Deltax Shear.

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Max Weinstein Scrap Metals
2426 Morris Avenue
Union, New Jersey
908/686-8236

On October 6, 2004, I made contact with Max Weinstein Scrap Metals. This place of business is under new management. I spoke to Elvis, new owner. Elvis related there are three "alligator shears" at his place of business. Elvis did not know if the shears were J. McIntyre. The shears are old and identification of the machines is not visible. Elvis extended the invitation to me to visit his shop and view the shears.

On October 7, 2004 (Thursday)

Cinelli Scrap Metal
169 McKinley Avenue
Hackensack, N.J.
201-488-2588

On October 6, 2004, I made contact with Cinelli's Scrap Metal. The male I spoke would not verify nor deny that their company was in possession of J. McIntyre Allegator Shearer". This male would not divulge any information pertaining to their company's operation. This male will have the owner of the company call me back. This male would not give any first or last name of who would be calling me back. There is some indication that this male was familiar with J. McIntyre when he said, "I would not go against J. McIntyre".

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On October 7, 2004, (Thursday) I received a call from a male who identified himself as Craig Cinelli, owner of Cinelli's Scrap Metal. Mr. Cinelli was skeptical of why I was in contact with his company and how I was able to obtain the information concerning Cinelli Scrap Metal at 169 McKinley Avenue, Hackensack. NJ. Without divulging any names in this civil litigation, Mr. Cinelli was informed that there is civil litigation not involving his company. He was informed that the address and phone number for Cinelli's Scrap Metal was obtained through information on the internet yellow pages.

Mr. Cinelli acknowledged that his company does have a small J. McIntyre Shear machine. Mr. Cinelli would not divulge any further information until he was satisfied as to the purpose of the inquiry.

NOTE: The other company name that has been provided by Bob Alexander is Curcio Scrap Metal, Saddle Brook, N.J. (973/478-3133). Curcio Scrap Metal was not contacted by me because of the similarity of Curcio Scrap Metal, 416 Lanza Avenue, Garfield, N.J., in this litigation.

Closing Note: This report is being submitted to you for your review and evaluation. Should you have any questions or wish to discuss this matter please be in touch with James F. Cuzzupe, P.I.

Respectfully submitted,
s/
James F. Cuzzupe. P.I.

APPENDIX II — EXHIBIT X TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, DATED OCTOBER 11, 2006: CAPTION PAGES OF PLEADINGS IN SUITS AGAINST J. McINTYRE MACHINERY, LTD. IN ILLINOIS, MASSACHUSETTS, KENTUCKY AND WEST VIRGINIA

STATE OF ILLINOIS Atty code 12991
1/21/99 204842
SS:

COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
LAW DIVISION

CLARENCE MILLER, JR.,

Plaintiff

v.

MCINTYRE MACHINERY AMERICA, LTD.,

Defendant

COMPLAINT AT LAW

COUNT 1

Plaintiff, CLARENCE MILLER, JR., by his attorneys, DOMBROWSKI SORENSEN, complaining of the Defendant, MCINTYRE MACHINERY AMERICA, LTD., (Hereinafter "MCINTYRE"), alleges as follows:

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1. On or about January 21, 1999, Defendant MCINTYRE, was a corporation doing business in the County of Cook and State of Illinois, and was in the business of sales of various machine products; including a "McIntyre 320 Metal Cleaning Shear.

2. At some time prior to January 21, 1999 Defendant sold the aforesaid Metal Cleaning Shear to Lakewood Recycling Center, Inc. located in Chicago, Illinois.

3. On January 21, 1999, Plaintiff, CLARENCE MILLER, JR., was employed as a machinist at Lakewood Recycling Center and was assigned to the aforementioned Metal Cleaning Shear.

4. On January 21, 1999, while using the aforementioned Metal Cleaning Shear

Appendix II

UNITED STATED DISTRIC COURT
DISTRICT COURT OF MASSACHUSETTS

C.A. 99-CV-10145-PBS

RICHARD GRAHAM AND
MARGARET L. GRAHAM,

Plaintiffs

v.

ALAN ROSS MACHINERY CORP.,
J. MCINTYRE (MACHINERY) LTD. AND
MCINTYRE MACHINERY AMERICA, LTD.,

Defendants

ANSWERS TO INTERROGATORIES PROPOUNDED BY THE PLAINTIFF, RICHARD GRAHAM TO A DULY QUALIFIED OFFICER OF THE DEFENDANT, J. MCINTYRE (MACHINERY) LTD.

Q.1) Please state your name, age, residential address, occupation, name and address of your employer, present position with the Defendant Corporation and the dates you have held said position.

Answer 1

Sally Johnson, Age 37, Managing Director, J. McIntyre Machinery/Nottingham Metal

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Recyclers.NMR House, Alcester Street, Dunkirk, Nottingham, NG7 2SD

Q.2) Concerning the Defendant, J. McIntyre (Machinery) LTD., please state:

a. Its full and complete corporate name as of the date that this Interrogatory is answered and its date and place of incorporation; and

b. Its principal place of business for each year from 1994 to the present.

Answer 2

J. McIntyre Machinery, Ltd.
Incorporated in England, July 10, 1975

Appendix II

COMMONWEALTH OF KENTUCKY
28TH JUDICIAL DISTRICT
PULASKI CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 00-CI-00797

DAVID B. WHITAKER

PLAINTIFF

and

SOMERSET SCRAP METAL COMPANY

and

MIDWESTERN INSURANCE ALLIANCE, INC.

INTERVENING PLAINTIFFS

v.

SOMERSET SCRAP METAL CO.
LAKE CUMBERLAND, LLC Delaware Corporation
d/b/a LAKE CUMBERLAND REGIONAL
HOSPITAL and LAKE CUMBERLAND REGIONAL
HOSPITAL, LLC

DEFENDANTS

* * * * * *

Appendix II

ANSWER TO INTERVENING COMPLAINT

Defendant Lake Cumberland LLC d/b/a Lake Cumberland Regional Hospital and Lake Cumberland Regional Hospital, LLC (hereinafter referred to as Defendant) for their answer to the intervening complaint of Somerset Scrap Metal Company, and Midwestern Insurance Alliance, Inc., states as follows:

FIRST DEFENSE

The intervening complaint fails to state a claim upon which relief can be granted.

Appendix II

IN THE CIRCUIT COURT OF CABELL COUNI'Y,
WEST VIRGINIA

Civil Action No. 99C0326

MIKE SMITH d/b/a
EMPIRE RECYCLING

Plaintiff,

v.

McINTYRE MACHINERY AMERICA, LTD., INC.,
a Corporation and J. McINTYRE MACHINERY,
LTD, a foreign Limited Partnership, and DOES
1-100, inclusive,

Defendants.

COMPLAINT

For a cause of action herein your plaintiff, Mike Smith d/b/a Empire Recycling, respectfully alleges and says as follows:

COUNT ONE

1. At all time mentioned herein, Mike Smith d/b/a Empire Recycling, was a citizen and resident of Cabell County, West Virginia.

2. McIntyre Machinery America, Ltd., Inc. is a

corporation duly organized and existing in the state of Ohio.

3. At all times mentioned herein, Defendant, J. McIntyre Machinery, LTD, is a foreign limited partnership duly organized and existing under the laws of England, having it's principal place of business located at Harrimans Lane, Dunkirk, Nottingham, NG7 2SD, England, and at all times material hereto, was engaged in the business of, among other things, designing, manufacturing, selling and/or distributing of J. McIntyre Machinery, LTD Alpack 5000 Can Densifier and a J. McIntyre Machinery, LTD Alpack 2000 Can Pre Sorter, many of which entered the stream of commerce in West Virginia.

APPENDIX JJ — TRANSCRIPT OF HEARING BEFORE THE NEW JERSEY SUPREME COURT, DATED JANUARY 21, 2009

Colloquy

CHIEF JUSTICE RABNER: The first matter of the day is *Nicastro v. McIntyre Machinery America, Limited.* Can we have appearances of counsel, please?

MR. GOOBY: Steven F. Gooby from the firm Morison, Ansa, Holden, Assuncao & Prough for the Appellant and Defendant J. McIntyre Machinery, Limited.

MR. ROSS: Alex Ross, Rakoski & Ross, for Robert Nicastro, the respondent in this case and plaintiff to (indiscernible).

MR. MILLER: Jonathan Miller, Locks Law Firm and the New Jersey Association for Justice known last year and before that as the Association of Trial Lawyers of America of New Jersey, as Amicus Curiae.

CHIEF JUSTICE RABNER: Welcome, Counsel.

Mr. Gooby?

MR. GOOBY: May it please the Court? I'd like to respectfully request five minutes for rebuttal.

CHIEF JUSTICE RABNER: We'll gladly have you up for rebuttal. We usually have it for a little shorter

period. Please go ahead.

MR. GOOBY: Two minutes would be fine or any amount of time would be great, Your Honor. Thank you.

This petition presents the opportunity for this Court to revisit the stream of commerce theory of personal jurisdiction and to settle the important question of whether New Jersey should adopt the stream of commerce plus test espoused by Justice O'Connor's plurality opinion in the United States Supreme Court case *Asahi Metal Industry v. Superior Court of California.*

We respectfully request that this Court affirm the Appellate Division's adoption of the stream of commerce plus rationale as the law of the State, but we respectfully request that it reverse the Appellate Division's judgment because that court misapplied this rationale in this case to J. McIntyre Machinery, which is a British company that did not direct any conduct towards or have any conduct with the State of New Jersey.

In the more than 20 years since *Asahi* was decided, this Court has considered the stream of commerce theory in several cases, but in each case personal – the personal jurisdiction question was resolved, as this Court stated in *LaBelle v. Everglades Marina* (phonetic), by avoiding any areas of unsettled jurisprudence and hewing closely to the limited fundamentals about which there is little or no dispute or debate; namely, the minimum contacts analysis first

articulated in the *International Shoe* case.

In this case, we submit, the facts presented do not allow for a personal – for personal jurisdiction to be found under a traditional minimum contacts analysis. J. McIntyre Machinery, which I'll refer to as JMM, has no presence in New Jersey and never conducted any activities here. For example, it's undisputed that JMM has no property, bank accounts, employees, sales offices, or representatives in this State. In addition, it's not licensed to do business in New Jersey and it does not generate revenue or pay taxes here. Thus, personal jurisdiction can be exercised over JMM by this State's courts only pursuant to the stream of commerce theory.

Justice O'Connor's stream of commerce plus test should be adopted and applied here because it requires additional conduct by a foreign defendant before the mere placement of product into the stream of commerce results in – in the exercise of personal jurisdiction.

The additional conduct element is in accord with decades of this Court's in persome (sic) jurisdiction and jurisprudence requiring a foreign defendant to have purposely availed itself of the privilege of conducting activities within New Jersey, thus, invoking the benefits and protections of our laws before personal jurisdiction may be exercised.

Under the stream of commerce plus rational New Jersey courts cannot exercise personal jurisdiction over JMM in this case. Under the rationale, the placement

of a product into the stream of commerce without more is not an act of the defendant purposely directed towards the State; thus, an exercise of personal jurisdiction over a foreign defendant such as JMM requires the defendants who have engaged in additional conduct directed towards the forum state.

The Appellate Division recognized below that such conduct, as Justice O'Connor espoused, could include designing a product particularly for the forum state, advertising in the forum state, establishing service channels for customers in the state, or marketing through a sales agent in the forum state. The Appellate Division also inclusively recognized that all but the last of these criterial were plainly inapplicable to this case, and only by misconstruing the plus factor of sales agent in the forum state and misapplying to that factor, purported facts created by inferences the Court made from JMM post-sale and post-accident communications was the Appellate Division able to find jurisdiction over JMM.

There are no competent facts in this case that establish that JMM marketed the subject product or any product through a sales agent in New Jersey. McIntyre America was JMM's Ohio based distributor that had no presence in New Jersey. No sales agent of any kind in New Jersey was involved in the sale or shipment of the product from McIntyre America in Ohio to Plaintiff's employer in New Jersey. Thus, the Appellate Division incorrectly determined that JMM is subject to personal jurisdiction based on the faulty

premise that JMM sold product to a single Ohio based distributor, which, in turn, resold the products in the United States JM – that JMM was intent on doing business in New Jersey even though there was no showing that JMM ever directed any of its conduct towards New Jersey.

From the factual inferences it made, the Appellate Division improperly held that JMM purposely availed itself of the privileges of conducting business in the United States and should, therefore, be subject to a New Jersey court's exercise of personal jurisdiction since New Jersey is one of the 50 states and a possible location for one of these products.

Moreover, the Appellate Division incorrectly held that one element of the stream of commerce plus test requires a foreign defendant to be aware that its product "might end up in New Jersey." This directly contradicts Justice O'Connor's articulation, which the Appellate Division even cited to in its decision, that mere awareness that the stream of commerce might sweep the product into the forum state would not convert the mere act of placing the product into the stream of commerce into an act purposefully directed towards the forum state.

By misconstruing and misapplying the stream of commerce plus test the Appellate Division, thus, announced an incorrect standard for the exercise of personal jurisdiction in this State under the stream of commerce doctrine. Accordingly, the Appellate Division's

judgment should be reversed.

Finally, even if the stream of commerce rationale espoused by Justice Brennan were adopted by this Court as opposed to Justice O'Connor's view, the Appellate Division held, it would still be improper for New Jersey courts to exercise personal jurisdiction over JMM. Under Justice Brennan's view, as long as a manufacturer is aware that the final product is being marketed in the forum state, the possibility of a lawsuit there cannot come as a surprise.

Here JMM's products were not marketed in New Jersey, nor was JMM aware of any marketing in New Jersey because there was none. The sale of the subject machine came about because plaintiff's New Jersey employer, Mr. Curcio, traveled of his own accord to a Las Vegas trade show without any impetus from JMM where he — where Mr. Curcio presumably saw many different machines, including a JMM machine. However, there's no evidence that Mr. Curcio spoke with anyone from JMM about the machine or that JMM was in any way aware that he was from New Jersey. Mr. Curcio then traveled back to New Jersey at some later time, which could be as much as a year or more. Later his son called McIntyre America in Ohio to order a shear machine, which was shipped from Ohio to New Jersey without JMM's involvement or knowledge.

THE COURT: Counsel, both Justice O'Connor's opinion and Justice Brennan's were — were tailored to the facts of *Asahi*, which dealt with a supplier who was

providing to an ultimate distributor apart with that ultimate product being — been marketed in the United States. So it's a little bit different. So when you were reading from Justice Brennan's that the final product is being marketed, he was tailoring his remarks to the particular facts of *Asahi*. Let's take the facts over here. Where it appears that your client, McIntyre, was marketing the entire United States, the British company didn't know when it was holding a trade show in Las Vegas whether or not there would be a California purchaser, a New York purchaser, a Georgia purchaser, or a New Jersey purchaser. They were happy to have any purchaser from any state. Their entire marketing area was — was the United States of America. Take — are you suggesting that the only areas where — only places where there could be suit would in what, Nevada, where maybe a single product wouldn't have been sold just because of the fortuitous circumstance that the trade show was there? Or in Ohio where the distributor was shipping out the machines, even though there may not have been a purchaser in Ohio? Why is it asking too much when a foreign manufacturer is targeting the entire United States and it's sending perhaps a dangerous instrument that is deeply flawed, that it be held accountable in the — in the jurisdiction where the product is actually — actually purchased?

MR. GOOBY: First, Your Honor, I believe that marketing is more than just sort of a cerebral concept that I — we'd like to sell our product in the United States. I believe marketing, and then Justice Brennan, I think, focused on that, is — it has to be more than

that. It has to be some conduct, some activity directed towards a state to market, to sell, to offer for sale the product. At these trade shows — and the evidence in the record shows that at these trade shows it was not uncommon for customers to approach the representatives at the booth and actually place orders for the machine. Well, clearly at that point they would know that this is a customer from New York or California or wherever it may be, and they sign them up to sell the order. I think that would result in personal jurisdiction. There's knowledge of a marketing effort towards that state. Here there was no — there is no evidence of any marketing effort towards New Jersey. There's no evidence that Mr. Curcio made it aware that he was from New Jersey.

THE COURT: Well, the marketing effort is toward everyone, right. Toward every state. Correct?

MR. GOOBY: But I think marketing — again, I think marketing has to be — it has to be something. It has to be more than just we want to sell to —

THE COURT: But your client knows that a trade show attracts people from all over the country, correct?

MR. GOOBY: And perhaps all over the world, sure.

THE COURT: You weren't just expecting people from Las Vegas, were you?

MR. GOOBY: Not specifically. Certainly not.

THE COURT: Okay. You were hoping that anyone interested in the machine from anywhere in the United States would be visiting the trade show and would be sold on the product, correct?

MR. GOOBY: Correct.

THE COURT: So that person — one of those people happened to be from New Jersey.

MR. GOOBY: But, again, when we're talking about personal jurisdiction, we're talking about — and I think the concept in Justice O'Connor's plurality opinion is — is important to keep in mind in the sense that it requires additional conduct, it requires purposeful availment. She didn't want to lose that aspect, so —

THE COURT: You know, that was 21 years ago. That was Justice O'Connor, then you had Justice Brennan. The world has moved on. We're a smaller world. Globalization is here. There are multinational corporations that market and distribute all over the world, and in ways in which they try to insulate themselves by having exclusive distributors in particular countries. When they're passing along dangerous products, why should we insulate them when a dangerous product winds up in New Jersey and winds up injuring one of our citizens? They should be taking out insurance to protect against that possibility, don't you think?

MR. GOOBY: I think that, again — well, first of all, even though *Asahi* was 20 odd years ago, I don't think, although the world clearly has advanced in many, many ways, that the idea of globalization was not present in 1987. I think there was certainly considerable global marketing activity. I don't think that concept has really changed and I don't think that concept that Justice O'Connor, were she deciding the *Asahi* case today, would view it any differently. I think she still wants to look at state sovereignty and determine that under the —

THE COURT: How about our opinion in *Charles Gendler & Company*? And I will court — quote our Court.

"A manufacturer's awareness of the distribution system through which it receives economic and legal benefits justifies subjecting the manufacturer to the jurisdiction of every forum within its distributor's market area." That's our Court.

MR. GOOBY: That is our Court, and I think that in light of *Asahi* and in light of the comments that this Court made in *LaBelle v. Everglades Marina*, that the stream of commerce doctrine is unsettled as a result of *Asahi*. I believe it reflects on the continued validity of *Gendler* because I think the doctrine has been advanced and refined by *Asahi*. Even though it was a plurality decision, there's still a — with Justice Brennan's view, which is the most liberal, I would — I would suggest, that there's a floor for due process rights of foreign defendants. So — but even in *Gendler*, *Gendler* required

knowledge, actual or constructive, of the distribution system, and what we have here is nothing more than one product being sold to New Jersey. There's no evidence of any other sales to New Jersey. There's no evidence of any other knowledge of JMM of sales to New Jersey.

THE COURT: What if it sold one of those machines to each of the 50 states, excluding Nevada and Ohio? Jurisdiction nowhere? They got 48 of those machines. What, they sell for about $20,000 a piece? Got to go to — everyone's got to go to England?

MR. GOOBY: Well, I don't think that's the case, Your Honor. I think that Ohio would be — very tough to argue that there wouldn't be personal jurisdiction over JMM in Ohio. There was conduct being transacted — or business being transacted there. Again, it's a single machine, and I think the cases that have sort of taken this globalization concept to sort of imply, although no one's quite ready to say yet, that if you sell the product anywhere and it ends up anywhere, you're subject to — you're subject to personal jurisdiction wherever it ends up. That's exactly what *Asahi* was trying to avoid. That's what —

THE COURT: Well, that's — this is different, because in *Asahi* you had a Japanese corporation that gave a part to a Taiwanese corporation and the Taiwanese corporation then took the product to California. McIntyre has flown into Las Vegas, into this convention center, and is attempting to sell with its

exclusive distributor the product. It's a lot different from *Asahi*, and *Asahi* was an — was also the enforcement of an indemnification clause in California between a Japanese and a Taiwanese corporation. That's a lot different from this case.

MR. GOOBY: I agree the facts are different, but I think the intention of the Supreme Court in deciding that case was to refine the concept of stream of commerce — the stream of commerce theory of personal jurisdiction —

THE COURT: Well, and they — and they willfully failed it then because neither theory garnered a majority of the Court. The only thing *Asahi* stands for precedentially was that you couldn't exercise jurisdiction against *Asahi* consonant with due process, because the only thing anybody agreed with was there weren't sufficient minimum contacts to justify the exercise of jurisdiction. So why are you chasing *Asahi*? I don't get it.

MR. GOOBY: Because I think even — the Supreme Court has announced its view, and obviously it was a plurality decision. It wasn't definitive.

THE COURT: So it's non-precedential.

MR. GOOBY: But it's —

THE COURT: And this Court has never said that it

is adopting the stream of commerce theory. I don't understand why you, representing a defendant, would even allow those words to pass your mouth.

MR. GOOBY: Well, I think in *Gendler* this Court did adopt the stream of commerce theory and had revisited it in other cases such as *LaBelle* and —

THE COURT: Charles — *Charles Gendler* also says, and I quote:

"Defendant's contacts with the forum must be so continuous and substantial as to justify subjecting the defendant to jurisdiction."

I can give you a page site to that. Now if that's what *Gendler* stands for, which is what I think it stands for — I still haven't gotten an answer to my question, which is why you're chasing *Asahi*.

MR. GOOBY: Well, I was — I was under the impression — and it's my reading of *Gendler* that — the passage that Your Honor just cited was with respect to general jurisdiction and whether or not it would — defendant would be subject to New Jersey jurisdiction no matter what.

THE COURT: Well, that's an interesting theory because there are two types of jurisdiction, correct? General and specific.

MR. GOOBY: Correct.

THE COURT: And the allegations in this case were not general jurisdiction allegations, they were specific jurisdiction allegation — allegations, weren't they? What relevance does the stream of commerce theory have to specific jurisdiction cases? Isn't it really only limited to general jurisdiction cases?

MR. GOOBY: I think it — I'm happy to argue in the alternative if the Court is not inclined to adopt the stream of commerce theory yet, as such, for specific jurisdiction, but —

THE COURT: Well. Well, no. Take specific jurisdiction is when the product winds up — isn't this a specific jurisdiction case?

MR. GOOBY: This is — yes. It clearly is.

THE COURT: Because McIntyre targeted the United States, the product was purchased by a New Jersey customer and who was — who was injured in this State, and New — and that New Jersey citizen decided to sue in this State based upon the stream of commerce theory with specific jurisdiction.

MR. GOOBY: Right. And I think the stream of commerce theory came about in this case because there are no facts whatsoever, as the trial court found, and the Appellate Division confirmed as well, that allow an

analysis under traditional minimum contacts analysis. The facts are just not here to define any contacts by JMM that would give rise to personal jurisdiction in this State. So as the Appellate Division discussed, you look to what alternatives we have, and the Court found that stream of commerce — the Appellate Division found the stream of commerce theory would be one way to try to attempt to exercise jurisdiction.

THE COURT: Can I ask you a question? If this New Jersey citizen went through Ohio, would you be defending on the basis of you can't sue in Ohio, McIntyre isn't in Ohio, this person — this exclusive distributor is not a part of the corporation, and, therefore, go somewhere else?

MR. GOOBY: I don't —

THE COURT: Would you — would you be arguing that?

MR. GOOBY: If this — if this action was filed in Ohio, I think it would be much different and much more hard — much harder for me to argue that Ohio would not have jurisdiction over JMM.

THE COURT: But would you argue? I'm going to ask you now. If they go — if they wind up picking up their suitcase and going to Ohio, are you going to argue that Ohio has no jurisdiction?

MR. GOOBY: Although I have a lack of familiarity with Ohio law, Your Honor, I think I would be very hard pressed to argue that having the facts that this particular product was shipped by JMM from England into — into Ohio, so I think we'd be hard pressed to say that Ohio would not be —

THE COURT: Well, it wasn't just shipped, it was sold to somebody in Ohio.

MR. GOOBY: It was sold to somebody in Ohio. That's correct.

THE COURT: Pursuant to an ongoing commercial relationship.

MR. GOOBY: Correct, Your Honor.

THE COURT: Is it a real stretch for you to say there is jurisdiction against JMA England in Ohio?

MR. GOOBY: Only to the extent if Ohio has some peculiarity in their jurisdiction law I don't want to — to —

THE COURT: Well, let's — let's assume it's not Mars. Okay?

MR. GOOBY: If the law is the same as we have here in New Jersey, I think there would be personal jurisdiction over JMM in Ohio.

THE COURT: How about if it's in the same ballpark as New Jersey?

MR. GOOBY: Same ballpark.

THE COURT: Thank you.

CHIEF JUSTICE RABNER: You've stressed the fact that there was a single sale to New Jersey, but because of the way the sale went down, there are insufficient contacts with New Jersey. Suppose there were 15 sales that all grew out of the same approach here, where people like the Curcios went to a convention in Nevada? Under your theory there would still be no jurisdiction in New Jersey?

MR. GOOBY: I think it's not so much the focus on how many sales there were, but it's the number of sales that should give rise to either actual or constructive knowledge of the manufacturer that its products are being sold in New Jersey. So if we look at the *Harley-Davidson* case, the *ADC v. Harley-Davidson* case, which this Court decided as well, jurisdiction was found against a — again, a component part manufacturer, in that case from Wisconsin or Minnesota, I forget which. But the reason that jurisdiction was found even though they only sold to Harley-Davidson's factories, which were in Pennsylvania and Wisconsin, but not in New Jersey, they found that the — the component part manufacturer had to know that its parts were being put into Harley-Davidson motorcycles and that Harley-Davidson had 15 factory-authorized dealerships in the State of New

Jersey. It had to know that its products would be sold through that distribution network in New Jersey. So, again, I think it's not so much the count, but whether or not the number of products — and, I submit, once you get past a few, when you get into 10, 20 or 100 or 1,000 or more, I think it's much more difficult to argue that there's no awareness of the product ending up in a state such as New Jersey. But here we have one, —

CHIEF JUSTICE RABNER: Do we know the number

MR. GOOBY: – and it's from prior knowledge. I'm sorry.

CHIEF JUSTICE RABNER: Do we know the number of sales per years in the United States?

MR. GOOBY: I do not, Your Honor. That's — it's not in the record.

And, again, this is a — a fairly unique machine, and as I understand the facts in the record, when a sale came in, the order was placed over to JMM in England and they would actually build the machine. So it wasn't, you know, go to the warehouse and get 1,000 of these and put them on a ship. It was, okay, you have an order, call the factory, build one, ship it. So it was a very limited, limited production specialized type of machine.

THE COURT: Well — and, Mr. Gooby, correct me if I'm wrong, but when it was — the order came in, the order came in from McIntyre America?

MR. GOOBY: In Ohio, yes.

THE COURT: And title was passed to McIntyre America?

MR. GOOBY: Upon shipment to Ohio.

THE COURT: And once McIntyre America had it, did McIntyre England know who the ultimate recipient of it was going to be?

MR. GOOBY: No, and there are facts in the record where there were requests made by JMM to McIntyre America, tell us who your customers are, tell us where you're sending our machines, and they refused to provide that information.

THE COURT: Well, they may have, but with the machine weren't there instruct — instructions to — to contact the — the manufacturer if there were problems or if you needed further instructions on how to operate the machine?

MR. GOOBY: The user's guide that came with it, I believe McIntyre America would put its own sticker over there and would have its — its address and phone number. I'm not sure if it had the phone number on there or not, but I think there's also evidence that JMM, because it was a manual that it printed, also had its contact information as well, so —

THE COURT: I thought that the sticker thing was on the machine proper and that McIntyre America put its sticker above or on top of the JMM England sticker, but that the user's manual, the owner's manual or whatever, instruction booklet, specifically instructed the user that if it had questions, it could address the questions both to Ohio and to England.

MR. GOOBY: That may well be, Your Honor. That may well be.

THE COURT: And weren't these products also on consignment; that is, McIntyre in England sent it to its exclusive distributor, didn't get anything from the exclusive distributor until the product was actually sold?

MR. GOOBY: Well, in fact the consignment is what McIntyre America tried to turn this into, which is in no way what JMM wanted. JMM, upon receipt of a firm order, at least what it considered to be a firm order from McIntyre America, would then go spend the resources to build a machine and ship it, and apparently what was happening — the Appellate Division cites some of this post — post-sale evidence and maybe even post-accident communications, apparently these firm orders were not really firm orders. Nevertheless, JMM, believing they were firm, made the machine and sent it to Ohio where it sat in storage while McIntyre America looked for a purchaser. So JMM was actually getting the brunt of that — of that situation. It had nothing to do with inventory control or anything like that that the Appellate Division suggests.

Appendix JJ

CHIEF JUSTICE RABNER: Mr. Gooby.

THE COURT: Counsel — excuse me.

CHIEF JUSTICE RABNER: Please.

THE COURT: Counsel, were there cases in which McIntyre Engla..d would ship the product or machine directly to a customer in another state based upon McIntyre America's request?

MR. GOOBY: To the best of my knowledge, that did not happen, Your Honor. With respect to the equipment that's at issue — the type of equipment that's at issue here, there might be certain types of equipment that the company makes that necessarily have to be installed at the location, so they come in parts and have to be built there, so — but that's a totally unrelated type of equipment. That's an aluminum extract — extruding machine or something of that nature. This is a shear machine, and all the shear machines in similar type products were sold only to the — to the distributor and then resold into the United States.

THE COURT: Just one other question, Chief.

You had indicated in your opening that if a customer had gone to the Las Vegas show from New Jersey and had purchased the machine at the show, there would be jurisdiction in New Jersey.

MR. GOOBY: I think —

THE COURT: Did I understand you correctly?

MR. GOOBY: I think it would be very hard to argue that under Justice Brennan's view in *Asahi* — because his — his rationale is that awareness or knowledge of the product being marketed in the forum state, if you get an order at the show and the guy says, I'm from New Jersey, send it to me in New Jersey, I think that's knowledge of the product being marketed in New Jersey.

THE COURT: But isn't that —

MR. GOOBY: But that's not Justice O'Connor's view.

THE COURT: Isn't that the knowledge of McIntyre Ohio and not McIntyre England at that juncture?

MR. GOOBY: I think there's evidence in the record that JMM had individuals at the trade show as well, so to the extent that they were aware of communications with potential U.S. customers and information that those customers were providing, I don't know exactly, but I'll assume for the sake of this presentation that they would have been aware of that fact.

THE COURT: And while I said one more, Chief. Insofar as hardship or unfairness to JM (sic) England, is there a difference whether the case is heard in Ohio or New Jersey?

MR. GOOBY: I don't believe so, Your Honor, but I think what Your Honor is focusing on is the second prong of the minimum — of the personal jurisdiction analysis, minimum contacts and then traditional notions of fair play and substantial justice, and my view of that second prong is it's sort of a qualitative analysis of the contacts, so you have to have contacts, first, to get to the second prong to determine whether or not there are sufficiently valid contacts to have a court in New Jersey, for example, exercise personal jurisdiction. So —

THE COURT: All right. Thank you.

CHIEF JUSTICE RABNER: Is there anything you'd like to add?

MR. GOOBY: That's all for now. Thank you, Your Honor.

CHIEF JUSTICE RABNER: Thank you. Mr. Ross?

MR. ROSS: Thank you, Judge.

Good morning, Your Honors. I'm here to inform the Court that there has been a dramatic increase in the globalization of commerce to the point that it is commonplace for toys and food and pharmaceutical products or ingredients to be manufactured in China or India and shipped to a distributor in America to be sold throughout the United States causing injury or harm to citizens from Maine to California, as well as New Jersey. Is the toy maker, food, or pharmaceutical

provider free of liability for poisoning a New Jersey citizen because it used a distributor? If you are taken to an emergency room at night it is common for your X-ray or diagnostic test to be sent electronically to a doctor in India to be read and analyzed. If the report is shipped to a clearing house or distributor in Ohio, who, in turn, ships it to India, who then responds to Ohio, has the Indian doctor evaded liability for potential malpractice because he used a distributor? And, finally, if you work in a factory in New Jersey it is likely that the tools and machines you are — you are using are manufactured in Mexico, Italy, Brazil, Germany, or, in this case, Britain, and may very well only contain safety standards acceptable in those countries, if any, but not in the United States or in New Jersey. Is the manufacturer free of liability for a catastrophic injury because it used an Ohio distributor?

These countries should not be permitted to export their potentially dangerous or defective products to the United States with immunity from liability by the simple strategy of using a distributor, whether independent or controlled, which may very well be financially irresponsible, as in this case. Otherwise we are permitting an end run around our very carefully constructed safety standards, which have developed over decades of careful consideration and testing.

I'm here to report to you that the state of the law is lagging behind the state of modern global commercial reality. As Your Honor stated, it's been over 20 years since *Asahi* was decided and more than 23 years since

Charles Gendler was decided. It is almost as if the airplane has been invented, but the law refuses to acknowledge that a product can be in Britain in the morning and in New Jersey in the evening and yet legally there is no liability on the British company for this product so long as it was shipped from Britain through a distributor in Ohio or anywhere else and then into New Jersey.

In this case the defendant, J. McIntyre Machinery, a British company, created and controlled a distribution scheme for the sale of its machines to potential customers anywhere in the exclusive sales territory of its exclusive distributor, the defunct McIntyre Machinery of America, and that territory included New Jersey. In other words, the defendant, J. McIntyre Machinery, purposely availed itself of the privilege of conducting activities in the entire American market, including New Jersey, the forum state, even bragging about how its sales have rocketed in the USA. J. McIntyre Machinery still uses that line on its website today. In fact, if you would go on its website, you would hear — you would see a map of the entire world and it would say, we supply equipment worldwide from our base in Nottingham, England. We also have local sales and support agents in many countries. For details of your nearest agent, please click on the map above, or, alternatively, contact us directly. In short, J. McIntyre Machinery seeks to sell its machine everywhere and yet avoid liability anywhere by manipulating American due process rules by the simple expedient of using an American distributor.

Appendix JJ

Now this Court previously dealt with this situation in the *Charles Gendler* case, and I heard what Justice Rivera-Soto said earlier, but I beg to differ, and I quote from *Charles Gendler* at page 477. It says:

> "We now adopt the stream of commerce theory as a basis for asserting personal jurisdiction over a nonresident defendant."
>
> And what else did our Supreme Court say in *Gendler*? It said:
>
> "To allow a foreign manufacturer to shield itself from liability for damages caused by its products distributed by these middlemen would be to permit a legal technicality to subvert justice and economic reality in the worst sense. Foreign manufacturers should not be allowed to insulate themselves by using intermediaries in a chain of distribution or by professing ignorance of the ultimate destination of their products."

That's exactly what we have here, and you heard it this morning. We don't know where the product goes. Well, they know. They know it's sent to the — it's marketed in the entire country and also in the State of New Jersey.

The Appellate Division also quoted from a very important Arizona case called *Uberti*, involving a gun which was shipped — which was manufactured in Italy,

shipped to an Italian middleman, and then from that middleman to another middleman in the United States.

> "If the defendant's argument was to be accepted by the Court, then no individual state could assert jurisdiction over defendant simply because defendant did not target a particular state or group of states, but instead intended to sell its product to all of America. This argument turns common sense on its head, holding that a defendant intending to sell its products to any and all citizens of the United States could not be held accountable in any jurisdiction where the products cause injury defies any sensible concept of due process."

THE COURT: Do you see no difference between the exportation of a firearm and the exportation of a piece of machinery?

MR. ROSS: For purpose of this argument, there is no difference. The firearm was dangerously defective. It was not — the manufacturer was not sued because someone was shot by a gun, but because the gun itself was defective and either exploded or something went wrong with the gun the way it was designed, and, therefore, the person was injured, I believe was killed in that case. So in point of fact, there really is no difference. The same thing is true in our case. We have a machine and we have an expert report, and I think it's part of my appendix, which our expert says it was

dangerously defective, and Mr. Nicastro lost his right hand because of that machine.

THE COURT: I understand you have an expert report and you put it in your appendix, but was that before the trial court?

MR. ROSS: Yes. Oh, yes.

THE COURT: The expert report?

MR. ROSS: Yes. Yes, indeed it was. It was definitely before the trial court.

If I may continue?

Finally, the Appellate Division in our case, *Nicastro*, says:

> "Due process should not provide a safe harbor allowing alien corporations to ship potentially dangerous products to the United States driving American manufacturers out of business, while allowing the alien companies to produce with immunity dangerous products for distribution in this country."

Frankly, if the Court adopts the defendant's — the petitioner's argument, a foreign manufacturer need not put any guard on any machine. It will be cheaper, it will be sold more often, and drive out the manufacturers of machines that have guards and obey our regulatory

safety laws. Courts in New Jersey and elsewhere have recognized this problem and not permitted foreign manufacturers to escape liability.

I'm asking this Court to seize the opportunity to make a general declaration that if a product from a foreign manufacturer injures a person in New Jersey, there is jurisdiction in the courts of New Jersey if the United States is the likely or intended market. In other words, if it is foreseeable that the product would wind up in the United States and New Jersey. If that is asking too much, I would ask this Court to find that a foreign manufacturer which creates or controls a distribution scheme, as it was in this case, a distribution scheme in the United States which results in a product harming a person in New Jersey or a New Jersey citizen, it is subject to personal jurisdiction.

THE COURT: How did they control the distribution scheme?

MR. ROSS: Well, with the emails that were obtained during jurisdictional discovery, there are various letters and faxes and emails that indicate that they control the amount of the commission, they control the pricing.

THE COURT: Those are all post-event.

MR. ROSS: But this was all —

THE COURT: There was nothing pre-event.

MR. ROSS: As the Appellate Division said, that creates a reasonable inference that that's the way that this was conducted at the time. It's with that same entity, McIntyre Machine. There's no evidence that their relationship changed in any way from 1994, 1995 when Mr. Curcio, Mr. Nicastro's employer, visited them until those emails were created in the late '90s.

THE COURT: But —

CHIEF JUSTICE RABNER: Is there anything in the record that suggests the relationship was exactly the same?

MR. ROSS: There is no — there is no evidence to indicate that it was any different, Your Honor, and, frankly, they both attended —

THE COURT: You didn't answer the Chief Justice's question.

MR. ROSS: Pardon?

THE COURT: You didn't answer the Chief Justice's question.

MR. ROSS: I would say that the evidence in the record that indicates that is the way that this machine was purchased by Mr. Curcio. He attended a convention in Las Vegas, Nevada at which JMM, the British company, and MMA, the Ohio company, were — shared an exhibitor's booth. Mr. Curcio went there. Frankly, I

think under our traditional minimum contacts analysis, that that is the isolated act. That's enough. Mr. Curcio went there. He saw that there was a British company there and the Ohio company there. He looked at the machine. He observed the machine. He decided then and there that he wanted to purchase the machine. They deliberately lured someone from New Jersey and someone from New Jersey decided to purchase the machine after seeing it at that convention. So, frankly, I think under even traditional minimum contacts, that that is — that isolated act is enough under a specific jurisdiction situation, as we have here.

THE COURT: Was it advertised, the convention?

MR. ROSS: Well, there was a booth, and I'm sure Your Honors have —

THE COURT: No. I know there's a booth in Las Vegas. Did they advertise across the United States, including New Jersey, that there would be a convention at which such products would be sold or exhibited?

MR. ROSS: I think the way it works is that the convention was controlled by an organization called the Institute of Recycling Industries and at that point people such as Mr. Curcio, Mr. Nicastro's employer, would naturally go to that convention to see what's the latest tools and machines that they could possibly purchase, and to that extent —

THE COURT: I think the — I think the question has to do with your use of the phrase "they." They lured people from New Jersey to Las Vegas and then tried to hide behind a distributor. So I think the question went to, is there something to support the use of the verb "lure?"

MR. ROSS: I think I used the word "lured" because of the fact that they had a booth. They obviously, J. McIntyre, the British company —

THE COURT: No. That means they were there.

MR. ROSS: They were there.

THE COURT: The question is —

MR. ROSS: And they intended —

THE COURT: The question is —

MR. ROSS: Uh-huh.

THE COURT: — is there anything in the record that supports the suggestion that Mr. Curcio, sitting in New Jersey, was invited there by them —

MR. ROSS: I think he —

THE COURT: — enticed there by them, aware that they were going to be there, or is it some more general trade show he happened to show up at?

MR. ROSS: I think the latter is correct, that it was a general trade show and that there were many booths there, many exhibitors, as is seen from some of the other —

THE COURT: And under your theory, any one of them — any one of them if their product in some way, shape, or form ends up in New Jersey is subject to jurisdiction here.

MR. ROSS: Especially in this case —

THE COURT: Any one of them.

MR. ROSS: Yes. Yes, Your Honor.

THE COURT: Thank you.

MR. ROSS: The answer is yes. That's my answer. And the fact of the matter is that the British company knew that it was marketing itself to anyone who would show up at this convention, whether they were from New Jersey or Florida or California, and they did not exclude New Jerseyans and say, well, we're not selling you any — any machines to New Jersey because your laws there are just — just too strict and we don't like it. They —

THE COURT: And what if they do that? What if they put a sign in front of their booth saying, New Jersey need not apply?

MR. ROSS: But if New Jersey does apply and they sell to New Jersey, then they're still on the hook.

THE COURT: So if New Jersey need not apply, later on Curcio, as he did here, buys from the Ohio company, you're still on the hook.

MR. ROSS: I would say yes.

THE COURT: They're still on the hook. Sorry.

MR. ROSS: I would say absolutely yes, the British company would still be on the hook because the machine has found its way into New Jersey and cause harm to someone in New Jersey by the deliberate distribution scheme of the British company. They controlled this Ohio company. There were letters and emails and faxes talking about pricing, talking about commissions. On one occasion I saw the Ohio company took a commission before —

THE COURT: So what if the Ohio company says to Curcio, sorry, we can't sell it to you, but how about if we sell it to somebody in Pennsylvania and you just truck it over yourself and it ends up in New Jersey? Is McIntyre England still subject to our jurisdiction under your theory?

MR. ROSS: Yes. Yes, I would say so because the New Jersey —

THE COURT: So there's nothing they can do — once they show up at a trade show, nothing they can do to avoid New Jersey jurisdiction.

MR. ROSS: They can stop selling a dangerous machine. That would avoid —

THE COURT: Well, no, no, no. This has nothing to do with whether the machine is dangerous or not dangerous. This has to do with jurisdiction. Whether or not the machine is dangerous has nothing to do with jurisdiction. We don't have different rules for, oh, there's jurisdiction because someone got hurt. We don't have different rules for, oh, there's jurisdiction because it's dangerous. We have jurisdiction, we have due process, and under your theory, nothing they can do to prevent it. Once they show up at the trade show, nothing they can do to prevent being subject to the jurisdiction here in New Jersey.

MR. ROSS: I think that's one aspect of the cases. Yes, Your Honor. I would say that's true. That would be —

THE COURT: Why do you have to take — why do you have to take that position? Because it — because McIntyre went to the trade show with the intention of selling its products.

MR. ROSS: That's correct.

THE COURT: They didn't care where they were sold, as long as they were sold.

MR. ROSS: I agree.

THE COURT: Correct?

MR. ROSS: I agree 100 percent. They did not care. They could be sold to anybody anywhere in the United States. That was their goal. That's the reason they were at —

THE COURT: They didn't know who was going to show up at their booth. It could have been someone from Pennsylvania, someone from Alabama, someone from New Jersey, and they were all too happy to sell to anyone.

MR. ROSS: That's right, and the point I'm — Your Honor is correct. New Jersey was not excluded so that's — that hypothetical really is not the case in this particular situation.

THE COURT: But how do you get from that conclusion to saying that someone has purposely availed themselves of the benefits of law of this forum?

MR. ROSS: Exactly, Your Honor, because they created the distribution scheme. The British company selected a New — an American distributor to sell throughout the United States and appointed that distributor as its exclusive distributor, and that — the purpose of appointing that exclusive distributor was to sell throughout the United States. It was their scheme that they created. They controlled the inventory, the pricing, everything.

THE COURT: But they — but they sold the equipment to this so called distributor.

MR. ROSS: Yes. And —

THE COURT: And then the sales – the sales within the United States were exclusively the province of that distributor.

MR. ROSS: And that's —

THE COURT: JMM England had nothing to do with them.

MR. ROSS: I disagree, Your Honor. I think JMM had everything to do with it, although you are correct.

THE COURT: How?

MR. ROSS: In that the actual transfer was from Ohio to New Jersey or Maine or California or Pennsylvania.

THE COURT: How did JMM England have anything to do with any of the sales that JMM Ohio engaged in?

MR. ROSS: Your Honor, because these machines, these large industrial machines, were built on a per-order basis, so once the order came in —

THE COURT: By somebody in Ohio who was not disclosing, I need you to build this machine for me because I'm going to sell it to somebody in New Jersey or to somebody in Kentucky. All they said was, here is

an order, deliver it to me in Ohio, and it was delivered to them in Ohio, at which point JMM Ohio shipped it to New Jersey.

MR. ROSS: That's correct, Your Honor, but —

THE COURT: In the meanwhile, the people in England didn't have a clue that this machine was going from Ohio to New Jersey. It probably would have cost less in the way of — I would think in the way of shipping costs to ship it directly to New Jersey. Now why do you think they would engage in higher expenses?

MR. ROSS: Your Honor, I think the actual — the British company knew that the machines were not all winding up in Ohio because they selected the Ohio distributor for the entire North American continent.

THE COURT: They knew that they were reselling them.

MR. ROSS: Yes.

THE COURT: Of course, they did.

MR. ROSS: Yes.

THE COURT: But how did they know they were selling them to New Jersey? How is that purposeful availment?

MR. ROSS: Because of creating the agent which had control over the New Jersey market. That's the way there's the purposeful availment.

THE COURT: And they didn't care, as long as it was sold in the United States.

MR. ROSS: That's correct, Your Honor.

THE COURT: But your

THE COURT: And they may very well have thought through this middleman scenario that they would be insulating themselves —

MR. ROSS: Exactly.

THE COURT: — from liability, which is the very point that our *Gendler* opinion was — was trying to flesh out.

MR. ROSS: I agree completely, Your Honor. I think that what the defense here, the petitioner asks for is a roadmap for farm manufacturers on how to dump their unsafe products in the United States with impunity.

THE COURT: You know, Counsel, you keep jumping on unsafe and defective. This is a jurisdiction case.

MR. ROSS: Yes.

THE COURT: There has been no proof that this

machine is unsafe, that this machine is defective. You've got allegations in your complaint, that's all, and I suggest to you, Counsel, that adding red herrings to your argument is not advancing your cause.

MR. ROSS: Well, I — Your Honor, I am trying not to add any red herring, but the point — the reason why I'm here is because someone was injured and because we allege that the machine was defective.

THE COURT: Well, I sure hope so because otherwise you would have some real serious problems.

MR. ROSS: That's right, Your Honor.

THE COURT: You're alleging that someone has been injured as the result of the negligence of somebody else.

MR. ROSS: That's correct.

THE COURT: But at this point in these proceedings, it's just that —

MR. ROSS: Yes.

THE COURT: — an allegation.

MR. ROSS: Yes.

THE COURT: Well, it may be allegations, but for the purposes of these arguments, we can accept those

allegations as being true. We don't have to ignore what this case is about.

MR. ROSS: That's exactly what I —

THE COURT: This is a product liability case.

MR. ROSS: That's exactly what I was going to say, Your Honor. This was on a motion to dismiss, and I believe that the facts have to be accepted as alleged —

THE COURT: Counsel, it's a motion to dismiss for want of jurisdiction.

MR. ROSS: That's correct. That's correct, and we are —

THE COURT: It's not a motion to dismiss for failure to state a claim. Want of jurisdiction. To some of us that means something.

MR. ROSS: Yes. It means — it means a lot to me and it means a lot to my client as well, Your Honor.

THE COURT: Counsel, let me ask you this.

MR. ROSS: Yeah.

THE COURT: Consistent with fundamental notions of fairness and due process —

MR. ROSS: Yes.

THE COURT: — and this notion that someone has to do something in order to be hauled into a jurisdiction — and I understand that your theory is that the British company, by using a trade show, working through an exclusive distributor, in some fashion has made itself amenable to jurisdiction all over the United States simply because they are working through a distributor. Is that a fair summary of what you're saying? It doesn't —

MR. ROSS: Yes, it is, Your Honor, with the extra component that the British company controlled the distributor, controlled the distributor and said to it, this is how much you're going to charge for the machine, this is the amount of your commissions, this is how much inventory we want you to have, you are not allowed to take a commission until we get paid for the product. So, frankly, this is more of a consignment kind of deal, frankly, where the Ohio company gets paid after the British company gets paid. This was total complete control of this product sales in the United States by this British company, and they have cleverly used a distributor to avoid liability.

THE COURT: Now my question was exactly to that last point, and that is this. Consistent with notions of due process then, shouldn't we require some level of proof that there was an intention to limit liability in the United States or limit jurisdiction in the United States by the mechanism that they chose to operate through? Do you understand what I'm asking you?

MR. ROSS: Yes. You mean intent on the part of the British manufacturer?

THE COURT: Yes.

MR. ROSS: I have that intent in the appendix, Your Honor.

THE COURT: So that if we were to fashion a rule that said simply showing up at a trade show and — and using a distributor may not be enough, but when you do that, coupled with control of the distributor, coupled with an intentional effort to limit jurisdiction notwithstanding wherever the products might go, that would be an acceptable rule for you.

MR. ROSS: Yes. Yes. I think that falls within the category of what's known as stream of commerce plus, and we think, at the very least, we have that in this case, Your Honor, based upon that. We think there is more here than simply that, but, at the very least, we do have that.

If I may, Your Honor, the other half of the argument, of course, is where else could Mr. Nicastro bring this case? Once we establish through minimum contacts that there is jurisdiction here, then the other half of it is whether there's fair play and substantial justice, as far as the defendant is concerned. The burden is on them to show that there is not. Here New Jersey law will apply because the injury was in New Jersey. The machine is in New Jersey. The witnesses are in New Jersey. The

doctors who tried to repair Mr. Nicastro's hand are in New Jersey. The expert witnesses are in New Jersey. Everything is in New Jersey. The Workers' Compo benefits that were paid to Mr. Nicastro, which are —

THE COURT: That's not jurisdiction. That's *forum non conveniens* you're arguing.

MR. ROSS: Yes. And, Your Honor, I would challenge any other state in the United States to be a better forum for this litigation other than the State of New Jersey. Any other state would be a *forum non conveniens* truly.

THE COURT: With all the provincial pride I have I agree with you, but that doesn't make it constitutional.

MR. ROSS: Well, it does, Your Honor, because otherwise Mr. Nicastro is, frankly, out of court.

THE COURT: Why?

MR. ROSS: The -- the Ohio —

THE COURT: Why can't he go to Ohio?

MR. ROSS: The Ohio manufacturer is defunct. It no longer exists. Chapter 7, gone.

THE COURT: I understand that, but you heard counsel, essentially, concede that he has no jurisdictional defense to this action brought in Ohio.

MR. ROSS: And the Ohio Court — the first thing the Ohio Court would say, there may be jurisdiction here, counsel, but it's *forum non conveniens*. There is nothing here in — in Ohio that happened with regard to this case —

THE COURT: Well.

MR. ROSS: — other than the machine —

THE COURT: The one who would bring —

MR. ROSS: — was briefly sold —

THE COURT: Excuse me.

MR. ROSS: Yes.

THE COURT: The one who would bring the *forum non conveniens* motion would be the defendant, not the plaintiff.

MR. ROSS: Yes.

THE COURT: Right?

MR. ROSS: It would be them. Yes, Your Honor.

THE COURT: Okay. Do you think they would go and say, oh, this is inconvenient because all these witnesses are in New Jersey?

MR. ROSS: I think —

THE COURT: Do you really think they're going to say that?

MR. ROSS: I think they would say whatever it would take to get the case thrown out of court in Ohio, and a *forum non conveniens* would do it. That would be their argument.

THE COURT: Well.

MR. ROSS: And that's why defendants bring those arguments, Your Honor.

THE COURT: They may do that and then it gets thrown out there and you end up back here because they said it's more convenient here and now they're judicially estopped. You may end up exactly where you want to be.

MR. ROSS: Yeah. I – in all due –

THE COURT: If they are silly enough to make that argument. I don't think they are, by the way.

MR. ROSS: In all due candor, Your Honor —

THE COURT: Well, they won't wind up back

MR. ROSS: — I think we have a —

THE COURT: They won't wind up back here if we say there's no jurisdiction. They'll wind up nowhere.

MR. ROSS: That's correct. I'll be just out of court and that will be the end of it, so that just, frankly —

THE COURT: Do you really think that would be the result?

MR. ROSS: Absolutely. Absolutely, because you would say, can't do it in New Jersey, the Ohio court said, wrong — wrong forum for you, and otherwise that would be the end of the case, frankly.

You know, in this case I think there is no doubt that we have established that stream of commerce plus has occurred. Even in the *Asahi* case it said that if there is a distributor created by the manufacturer who is designed to sell the product in the forum state, then there is jurisdiction even under that stream of commerce plus. Of course, Justice Brennan went further than that and said that if someone is injured in this state by virtue of the intentional conduct of the British manufacturer in shipping the product and it results in an injury, then there is jurisdiction here, and, of course, we all remember that Justice Brennan was — was one of our own here. But the fact remains that we have enough stream of commerce plus to have jurisdiction in this case, otherwise Mr. Nicastro is out of court. There is nowhere else for him to go that makes sense, that's practical, and that also has jurisdiction, and these companies, whether they're food processors or toy manufacturers, they intend to ship throughout the United States and they can cause harm throughout the United States, as it did in this particular case. If they

use an impecunious distributor, then the injured party should not be out of court, especially when they intend to market the entire United States, which happened here.

CHIEF JUSTICE RABNER: Thank you, Mr. Ross.

MR. ROSS: Thank you.

CHIEF JUSTICE RABNER: Mr. Miller?

MR. MILLER: I would like to thank the Court for allowing me to argue briefly.

I shall support Mr. Ross, actually propose a theory that I believe will address some of the concerns and questions that have been raised by this Court; though I support Mr. Ross, I have slightly different preferences.

I respectfully request that this Court reaffirm the broadest constitutional standard for personal jurisdiction; that is, stream of commerce, as was set forth in *Worldwide Volkswagen*, and as adopted, I believe respectfully, by this Court in *Charles Gendler*. And by saying that I believe I address a concern, what happens if somebody excludes New Jersey? In *Worldwide Volkswagen* the Court said New Jersey could be excluded, and they also said that the foreign manufacturer could get liability insurance, which was another comment here dealing with fairness.

Now this standard, which is stream of commerce, as opposed to stream of commerce plus, I believe may be

better phrased as stream of commerce, dash, market or, dash, intended market, because I believe when you look at *Worldwide Volkswagen* and *Charles Gendler* it's clear that the intended market was a key to the stream of commerce and that's an additional requirement.

There have been three different —

THE COURT: I'm sorry, Counsel. But is your intended market iteration different from the actual market served iteration that's in your brief?

MR. MILLER: No. It's the same thing.

THE COURT: Okay. So it's just different words, but for the same thing.

MR. MILLER: Yes, Your Honor.

THE COURT: Intended and served.

MR. MILLER: Yes. There have been three ways of phrasing limits on the stream of commerce, and I believe when you look at all of them, they all can be seen as ways of talking about the market, limiting it to the market. One way of limiting stream of commerce is that it does not apply — jurisdiction does not apply if there's a fortuitous or isolated sale. That can be seen as a sale outside the stream of commerce or taking it — rather, outside the market or taking it outside the market.

Another limitation is that, well, the product ended up here by the unilateral activities of the plaintiff,

particularly in *Worldwide Volkswagen* they drove to Oklahoma. That, again, could be seen as outside the market.

And a third limit is that, is it fair for a defendant to reasonably anticipate being hailed into court here in New Jersey. Well, if the market is in New Jersey, then it's fair. If the market is not in New Jersey, then it's not fair.

Now this, of course, is the first part of a personal jurisdiction test. The second part, the standard part, is still the part that has to be met, and that is the policy argument that it — that jurisdiction not offend traditional notions of fair play and substantial justice.

The reasons why I ask for this broadest theory are two. First of all, we want it to be as fair as constitutionally possible for New Jersey residents to recover from everyone who has responsibility for the product that caused the injury. Secondly, this will bring to the table, if by jurisdiction, all who are responsible, from distributors right back up to manufacturers, and that will allow for a fairer allocation of ultimate liability, so that, for example, the small New Jersey distributor, if there is one, is not left holding the whole liability bag while the big rich foreign manufacturer escapes.

This comment was really taken from this Court's decision in *Newmark v. Gimbel's*. As I quoted in the brief, that the Court suggested it's to the interest of the distributor to bring in the manufacturer.

This also is to the benefit of the U.S. distributor, as occurred in this case, because then the U.S. distributor is not left holding the whole liability bag while the foreign manufacturer goes away. And this occurred in the *Sortisimo* (phonetic) case that I have cited, where there was a U.S. distributor that filed a third party complaint against the foreign manufacturer. And in this regard in preparing for this argument I discovered I made an error in my brief. I apologize to the Court. I said that in *Sortisimo* the U.S. distributor, Heidelberg Eastern, was a New York corporation. In reviewing that, I see it was an error. It was a Delaware corporation. That does not affect the legal argument I made.

Perhaps one more thing to perhaps address some of Your Honors' comments is that I think that this case factually is an easy case for jurisdiction. I can imagine lots tougher cases where it would be a foreign component manufacturer, where it would be a lot tougher on the facts to try to see if they met the test I suggest you take.

Here, though, I suggest, Justice Albin, you're absolutely correct that at Page 192 of the plaintiff's appendix there is an email from the English McIntyre to the McIntyre America, to the actual defunct distributor here and they say, the English one does:

"All we wish to do is sell our products in the States, capital S."

I think that makes it clear beyond *Caville* (phonetic) that in fact they wish to sell to every state, and so we should not have to prove New Jersey in addition.

That's the end of my presentation. Are there any questions I could try to answer?

THE COURT: The three-part or three-element test that you described all focuses on the plaintiff, but at least the way I understand jurisdiction, it is largely focused on the defendant and the defendant's acts.

MR. MILLER: I agree with —

THE COURT: Where do we throw that into the mix?

MR. MILLER: I agree with Your Honor. If it came across as focus on the plaintiff, that was my error. I apologize. I did not intend to focus on the plaintiff. When you look at, is it in the stream of commerce, that's done by the defendant. Is it the intended market or the actual market served. That's from the defendant's point of view. And is it fair traditional notions of fair play and substantial justice, that's all the defendant. Now I've seen in a number of cases that at times it is fair as part of this mix to look at the plaintiff's relation to the state, and the fact that the plaintiff is a New Jersey resident I believe is a factor that may be taken into account. But clearly Your Honor is correct, the main focus has to be on the defendant.

Appendix JJ

CHIEF JUSTICE RABNER: Thank you Mr. Miller.

MR. MILLER: Thank you very much.

CHIEF JUSTICE RABNER: Mr. Gooby, brief rebuttal?

MR. GOOBY: May it please the Court? The competent evidence and undisputed facts of this case without unnecessarily resorting to any inferences from post-sale or post-accident events confirms that J. McIntyre Machinery, Limited is not subject to personal jurisdiction in New Jersey under either articulation of the stream of commerce theory from *Asahi*. Accordingly, we respectfully request that this Court affirm the Appellate Division's adoption of the stream of commerce plus rationale as the law of this State, but reverse the Appellate Division judgment, because under either O'Connor's stream of commerce plus theory or under the rationale espoused by Justice Brennan, it would be inconsistent with JMM's due process rights as a foreign defendant for the New Jersey courts to exercise personal jurisdiction in this case.

Thank you.

CHIEF JUSTICE RABNER: Thank you.

We'll take the matter under advisement. (Proceedings concluded)

Appendix JJ

CERTIFICATION

I, Diana Pawlikowski, the undersigned transcriber, do hereby certify that the following transcript of the proceedings before the New Jersey Supreme Court on January 21, 2009, Tape No. AM-A, Index Nos. 001 to 4043, is prepared in full compliance with the Transcript Format for the Judicial proceedings, and is a true and accurate compressed transcript of the proceeding.

/s/
Diana Pawlikowski, AD/T #393
TAPE REPORTERS, INC.

Date: 10/25/10